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THE PRACTICE AND PROCEDURE OF INTERNATIONAL CONFERENCES

THE PRACTICE AND PROCEDURE OF INTERNATIONAL CONFERENCES

BY

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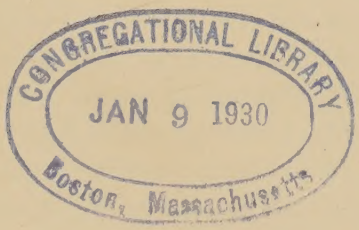

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PREFACE

The rapidity with which the conference method has come to the forefront in the conduct of international intercourse is one of the most striking developments in the present era of world affairs. Within the space of a very few years, this method has almost entirely supplanted bilateral diplomatic negotiation in the regulation of matters of interest to more than two or three nations. The number of such conferences held each year is constantly increasing; the scope of subjects they embrace grows ever wider; the effect they have upon the course of daily events the world over is surprisingly extensive and promises to grow progressively greater. We of this age are present at the rapid development toward maturity of a new political instrument whose field of action is as wide as the world itself and whose potential effect upon the course of relations between nations and peoples is as great, if not greater, than that of any other existing political instrument.

It was inevitable that, with the enormous increase in the number of international conferences in recent years, the subject of conference procedure should sooner or later demand some attention. Scarcely a conference has been held that has not at some point in its career encountered annoying questions of procedure, and not a few hopeful projects of interna-

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tional cooperative action have failed altogether because of procedural obstacles.

Yet the subject remained wholly neglected until 1925, when the Committee of Experts, appointed by the League of Nations for the progressive codification of international law, decided to include it on the provisional list of subjects of international law "the regulation of which by international agreement would seem to be most desirable and realizable at the present moment." In due course the Committee issued a detailed report on the subject for the consideration of the various governments. This report bears eloquent testimony to the great confusion surrounding the procedure of international conferences at the present time.[1]

In the views expressed by the various governments on the Committee's report there was by no means a unanimity of opinion that the subject was a desirable one for codification. Fourteen states replied in the affirmative (some of them very perfunctorily); five states replied affirmatively with reservations; and seven replied in the negative.[2] Among the latter, the British Government stated simply that it did not consider the procedure of international conferences to be "a subject of international law whose regulation by international agreement is desirable and realisable." The United States perceived "no real ne-

[1] For report of Committee, see Supplement to American Journal of International Law, XX, Special No., July, 1926, pp. 204-221.

[2] *Ibid.*, XXII, Special Suppl., Jan., 1928, pp. 21-25.

cessity for the regulation of these subjects by international agreement,'' and suggested that '' the determination of the procedure of international conferences might well be left to the discretion of the delegates representing the Governments participating in such conferences.''

The Committee of Experts finally adopted a special report on the subject, recommending that it be referred to a small group of experts rather than to the proposed general conference on codification.[3] The Committee added that even if the draft rules framed by such experts were not accepted by a conference of all the States, they would be most valuable as models. Acting upon this recommendation, the Assembly of the League of Nations, on September 27, 1927, passed a resolution requesting the Council to instruct the Secretariat of the League to cause its services to study the question on the lines indicated in the Committee's report. This study has not yet been completed.

It was very fortunate that the subject should thus have been removed from the field of codification. For the international conference is still in an early stage of evolution, and to crystallize its procedure into rigid forms at the present time would be certain to arrest its growth and cripple its usefulness. Furthermore, no serious study has yet been undertaken of the nature of the conference method and of the fac-

[3] Ibid., p. 43.

tors influencing conference procedure in general. The conceptual foundations are still to be laid upon which there can be erected a satisfactory code of rules of conference procedure.

The present work is accordingly not designed as a handbook of conference procedure, but rather as an introduction to the study of the conference as an instrument of international collective action. At the same time, there has been included for convenient reference a chapter summarizing current practice.

No detailed bibliography is included, chiefly because the treatment of the subject in existing treatises is, in most cases, extremely casual and of little value. The main source of material for the present study has been the records of the conferences themselves. The minutes or verbatim reports of many of the more recent conferences are available in printed form, either as separate documents or in general collections, such as the British and Foreign State Papers, the *Archives diplomatiques,* Martens' *Nouveau recueil général de traités,* and Foreign Relations of the United States. Complete printed records are available of most of the conferences held under the auspices of the League of Nations.

Of secondary materials, the most useful is Sir Ernest Satow's Diplomatic Practice, Volume II of which is largely devoted to an account of the past congresses and conferences. The same author also prepared a valuable pamphlet on international congresses for the British Peace Handbook Series. Lud-

wig Bittner's *Die Lehre von den völkerrechtlichen Vertragsurkunden* sets forth with meticulous care a vast number of details of treaty negotiations, most of which are of little importance. It is written from the traditional foreign office viewpoint and is of little help on the broad aspects of the subject. Of the general treatises on International Law, Fauchille's *Traité de droit international public,* Oppenheim's International Law, and Hershey's Essentials of Public international Law (revised edition), contain useful references to material on international conferences.

Of special works on particular conferences, perhaps the most noteworthy are W. W. Willoughby's Opium as an International Problem (the Geneva Conferences), and China at the Conference (the Washington Limitation of Arms Conference); G. A. Johnston's International Social Progress (the Work of the International Labor Organization); the Congress of Vienna, by C. K. Webster; The Berlin Congress, by Henry F. Munro; Three Peace Congresses of the 19th Century, by Charles Downer Hazen, William Roscoe Thayer, and Robert Howard Lord; The Hague Peace Conferences of 1899 and 1907, by James Brown Scott; The Hague Conferences, by A. Pearce Higgins; The International Union of The Hague Conferences, by Walter Schücking; and The Genoa Conference, by J. Saxon Mills.

For the general historical background of conferences, useful works are the Cambridge Modern His-

tory; the Cambridge History of British Foreign Policy; John H. Latané's History of American Foreign Policy, and the same author's The United States and Latin America; R. B. Mowat's History of European Diplomacy, 1914-1925; Walter Alison Phillips, The Confederation of Europe; David Jayne Hill's History of Diplomacy in the International Development of Europe; Oakes and Mowat's Great European Treaties of the Nineteenth Century; Gooch's History of Modern Europe; Grant and Temperley's Europe in the 19th Century; Talleyrand's Memoirs; and Thomas Parker Moon's Imperialism and World Politics. There are also numerous biographical works throwing light on particular conferences.

Especially helpful have been the following works on the general subject of international cooperation and organization: Raymond Leslie Buell, International Relations; L. S. Woolf, International Government; Paul S. Reinsch, Public International Unions; F. C. Hicks, The New World Order; Francis B. Sayre, Experiments in International Administration; Pitman B. Potter, Introduction to the Study of International Organization; Edwin D. Dickinson, The Equality of States in International Law; and Manley O. Hudson, Current International Cooperation.

The writer takes great pleasure in acknowledging his indebtedness to Professor Westel Woodbury Willoughby of the Johns Hopkins University for having suggested the subject of this study and for

his sympathetic guidance and inspiration. Of the many others who have given helpful assistance and suggestions, particular acknowledgment is due to Professor Walter Wheeler Cook, Professor John H. Latané, and Professor Arthur O. Lovejoy of the Johns Hopkins University, Professor Paul Mantoux, of the *Institut Universitaire de Hautes Études Internationales* at Geneva, and to Mr. Huntington Gilchrist, formerly of the Secretariat of the League of Nations.

The substance of this study was presented in a series of six lectures delivered before the Political Science Department of the Johns Hopkins University in April and May, 1928.

After this work had been set up in type, a volume on The Public International Conference, by Norman L. Hill, was published by the Stanford University Press. While the general subject of the two studies is the same, the material used and the method of approach is so different that there is practically no duplication. Unfortunately, it was too late to add any references to this work calling the reader's attention to Dr. Hill's volume on specific points that are also dealt with by him. However, the reader will find in that volume much interesting material on the general subject of international conferences.

F. S. D.

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CHAPTER I

The Conference Method in International Relations

For the political regulation of human affairs, the world happens at the present moment to be divided up into sixty-odd geographical units, each one exercising, actually or theoretically, an exclusive jurisdiction over a particular portion of the earth's surface. So far as human transactions take place wholly within the boundaries of these units, the machinery for their regulations is at hand in the various national governments. But we observe that, largely as a result of the great technological advances of the ninteenth century, there has grown up a vast network of human relations which extend beyond national boundaries, and hence are not comprised within the traditional political machinery of the modern state system. We observe, furthermore, that the political units themselves have developed an intricate system of relations with each other that presupposes a consciousness of some community of interests among them.

Some permanent regulation of these activities is obviously necessary if they are to continue to be a source of profit to those who are engaged in them and to the international community as a whole. In the absence of any organization with political power

coextensive with the territory over which these relations take place, such regulation can only be accomplished by the collective action of the various independent units interested in these activities. In practice, this regulation most frequently takes the form of multilateral international treaties or conventions embodying the terms of agreement among the interested parties. And the most suitable process yet devised for reaching these agreements is the international conference. The subject of organization and procedure of international conferences is accordingly closely related to the development of collective action by the nations of the world in the regulation of international activities that extend beyond the scope of national jurisdiction.

MEANING OF THE TERM "INTERNATIONAL CONFERENCE"

It is important to decide in the beginning what is to be included within the term "international conference." Etymologically, the term has entirely too wide a meaning to give us an exact basis for fruitful investigation. Any gathering together of any persons of different nationalities for the purposes of discussing any topic of common interest might be termed an international conference. There have, in fact, been innumerable so-called international conferences convened in the past by private organizations, as well as by governments, to deal with questions both of private and of public interest. There

have been private international conferences attended by representatives of governments and public international conferences attended by representatives of private institutions and by individuals. And the sharp line customarily drawn between public and private institutions almost reaches the vanishing point in the case of the gatherings of such an organization as the International Association to Combat Unemployment, which, according to Woolf, numbers among its members "eight Governments, seventeen national official bodies, eight provinces, two federations of towns, fifty-nine towns, fourteen official municipal bodies, three *fédérations nationales de placements,* twelve *bourses de travail,* twelve *fonds de chômage,* three international associations, fifteen scientific societies, six national federations of employers, three professional federations, four local federations, thirty Labor federations, and individuals belonging to twenty-three different countries." [1]

But there still remains in common thought a fairly distinct line between governmental agencies and private organizations, and it is only with the activities of the former that the jurist and the political scientist are concerned. Hence, the term "public international conference" will be limited to those international gatherings *convened by governments or governmental agencies for governmental purposes.*

[1] L. S. Woolf, International Government (1916), p. 170. Note also the international organization of the Red Cross, which assumes the character of a governmental agency for some purposes and a private one for others.

This is, of course, not a fixed or absolute category, since its terms are all susceptible of variable meanings in exceptional cases. More precisely, " to convene " means to bring into existence; " governmental agencies " refers to any official or body of officials in a politically organized community who for the moment exercise, with the acquiescence of the body politic, the power to bring into play the political machinery of the community; and " governmental purposes " means any subject that is commonly included within the functions of political government or that is permitted at a particular moment to be regulated by political agencies. Each one of these terms has its borderland of doubtful meaning, but it is believed that they are sufficiently precise to enable us to designate without difficulty the vast majority of international conferences as " public " or " private."

But even among public conferences convened by governmental agencies we find an extraordinary variety. Conferences have been held to deal with such diverse subjects as the settlement of peace terms after world wars and the fixation of a prime meridian; the determination of the succession to a throne and the suppression of traffic in obscene literature; the establishment of national boundaries and the removal of restrictions on imports and exports; the recognition of " spheres of influence " and the prohibition of the use of white phosphorus in the manufacture of matches; the preservation of the bal-

ance of power and the protection of birds useful to agriculture. They have been convened by individual nations, by groups of nations, and by international organs, such as the League of Nations. They have been attended by monarchs and other heads of states, by ambassadors with full powers and ambassadors with no powers at all, by ministers resident and ministers appointed *ad hoc,* by heads of foreign offices and by bishops, by generals and by doctors of philosophy, by experts and by that curious official known as an "unofficial observer."

There have been conferences *ad hoc* and conferences meeting periodically to deal with some field of international activity. There have been conferences that have been highly organized before they met, and others that have completed their work without any visible organization at all—without plenary meetings, without a president, without committees and without records. And lastly, since the establishment of the League of Nations, a new distinction has sprung up between conferences of the League or of its various organs, conferences convened by the League and held under its auspices, conferences initiated by the League but not convened by it or held under its auspices, and conferences not connected with the League at all.

Where in all this bewildering array are we to draw the outlines of our subject? It is clear that the international conference as a piece of political machinery is not the offspring of logical deduction from ab-

stract principles of political science, nor was it designed in advance by experts in government. Neither is it the product of the fundamental law of an integrated political community. Instead, it has grown up in a spontaneous and more or less haphazard manner out of the developing needs of international life, and is changing with those needs.

To understand the nature of this new instrument it is necessary to study it in direct relation with the changing conditions out of which it has grown. Such a study will reveal that the conference method has, in the course of its growth, paid small heed to the traditional concepts of the juridical nature of the international community and that in many particulars its development is not easily reconciled with some fundamental doctrines of international jurisprudence.

THE CHANGING CONDITIONS OF INTERNATIONAL LIFE

The difficulty of dealing with conference procedure along traditional lines of thought will be apparent if we look back for a moment upon the character of the civilized world as it existed at the time that current theories of international jurisprudence were first established. In two essential particulars it differed materially from the international community as we know it today. In the first place, the people of Europe were localized in small communities which were largely self-supporting. Transportation was slow and difficult. Transactions between individuals

did not often extend beyond political boundaries, and for the most part not beyond the local community. The complete daily round of activities and interests of the individual, both social and economic, was enclosed within the boundaries of his local or national political unit. With the possible exception of war and religion, the people of Europe had not developed any common interests extending beyond national borders that could give rise to a conscious desire for common regulation. There was, in fact, no international public, outside of the crowned heads of Europe and their ministers.

In the second place, there was the correlative fact that almost without exception the political units of the civilized world were ruled by autocrats. Political life was organized, not horizontally, but vertically, and the various political units that grew out of the ruins of the feudal system touched each other only at the top. At least so far as the rest of the world was concerned, the sovereignty of states was completely identified with the person of the ruling monarch. The domain of the state was the personal dominion of the king, and its relations with the outside world were the personal relations of the king. The affairs of international concern were the affairs of ruling families, not as representatives of the people at large, but as ruling families. Their main concern was for the perpetuation of their own dynasties and the extension of their power and possessions.

These matters did not materially affect the daily lives of the people at large.

The international polity of the seventeenth and eighteenth centuries had little if any concern for the man on the street. The interests and activities of the farmer, the artisan, the merchant, were confined almost entirely within the limits of his local community. In nine cases out of ten, all of the persons and things concerned in a particular transaction were subject to a single political jurisdiction and could be regulated in the manner desired by the dominant power of that jurisdiction. Political boundaries really corresponded very closely with the limits of the consequences of associated behavior of the people within them.

The contacts and intrigues of princes and their ministers did not materially affect the great mass of the people at large, save as they resulted in wars and taxes. When these matters became too burdensome for the man on the street, he was not entirely without means of making his voice heard, but in all ordinary matters of international intercourse, he was not consulted by his sovereign, nor would he have had any particular interest in these matters if he had been. So far as he was concerned the relations between nations were the private relations of ruling princes with each other.

These facts are reflected in the outward forms of international intercourse of the time, many of which still survive to the present day. Diplomatic envoys

represented the person of the sovereign rather than the state or the people. International treaties were personal agreements between kings and were drawn up in their names, rather than in the names of the various states. Treaties went into force upon their signature or approval by the kings or their personal agents and were not dependent for their validity upon ratification by an agency representative of the public at large. Full powers to conduct negotiations and to sign treaties were granted by and in the name of the king, and not of the people. Foreign relations were conducted as matters between monarchs, and with very little reference to the wishes of their subjects, who, for the most part, had no particular wishes to express.

In general, international relations throughout this period were not only all "political," but were likewise all of the bargaining type. No consciousness existed among the ruling heads of Europe that they formed parts of a single community. There were, to be sure, political combinations and alliances and concerts of action during this period, but these were merely the joint action of separate political entities acting together for their separate advantage. No attempt was made to regulate the relations of states from the standpoint of the society of nations as a whole. A sufficient community of interests did not, in fact, exist among them to make such a conception possible.

But two developments which began in the latter part of the eighteenth century and have continued up to the present time have completely changed both the substance of international relations and the methods by which they are conducted. The first of these was the industrial revolution and the second was the rise of popular government. These developments have not only altered the nature and extent of the relations between states as *political entities,* but have also given us an entirely new international public [2] with a new type of international relations which did not exist at the time when the classical theories of international jurisprudence were formulated. This fact is of great importance, for it largely explains why, in a theoretically unorganized collection of independent political entities enjoying exclusive territorial jurisdiction, we find such a surprising number of permanent international agencies engaged in the regulation of trans-national interests and activities on a community basis. For if it is true that no government can exist without a public, it is equally true that no public which has become conscious of its common interests remains very long without the establishment of instruments of government.

First, let us recall briefly the effects of the industrial revolution and the passing of autocratic government upon the relations of states as political units.

[2] The word "public" is here used in the sense given to it by John Dewey, in his illuminating work, The Public and Its Problems.

Of course these units still maintained their character as independent entities, but the subject matter of the relations between them changed from the consideration of dynastic matters and the personal relations of sovereigns to the interests, largely economic, of the new industrial and commercial classes that supplanted the nobility in the control of the political machinery. In the place of dynastic rivalries which engaged the activities of princes, there appeared an economic competition which sought to develop industry and commerce along national lines. Foreign offices became less concerned with court intrigue and the arrangement of royal marriages and matters of succession to thrones, and more with tariffs and trade barriers and the commercial exploitation of raw products in backward territories. In place of the mutually antagonistic interests of monarchs there grew up the competitive interests of the commercial and manufacturing classes.

At the same time, among the body politic that now determined the action of the state as a political unit, there were large sections whose interests were adversely affected by the antagonisms of monarchs. The vastly improved means of transportation and communication had removed the geographical isolation in which states had formerly existed and had created a certain amount of interdependence among them, even as political units. This eventually manifested itself in various types of coordinated action on political matters undertaken on the basis of the

group of states considered collectively, rather than from the standpoint of the individual interests of the separate units. Thus, steps have been taken to codify various phases of international law dealing with the political relations of states and to establish permanent international arbitral and judicial machinery. And in the appearance of the League of Nations we have what was intended by its authors to be a permanent system of international conferences for the purpose of dealing with political matters from the standpoint of the entire international community as a whole. To be sure, the actual amount of collective action that has been achieved up to the present time in the political field is extremely limited. But enough has been accomplished along this line to indicate that in a community of independent and sovereign states such action is not impossible.

Of much greater significance is the fact that the industrial revolution and the age of invention have brought into existence a new international public, with international interests apart from, and sometimes in conflict with, the interests of states as political units. With the invention of the steam engine and the tremendous improvement in the means of communication across national boundaries, individuals in different political jurisdictions began to have transactions with each other on a wide scale, and to discover that by means of these transactions their daily lives could be greatly enriched. National political boundaries soon became crossed with an

almost inconceivably complex gridwork of social and economic relationships. In effect, the geographical limits of numerous human activities and interests were expanded to a world-wide extent, while the boundaries of political jurisdiction over these activities remained where they were.

It was inevitable that some new form of political machinery should be developed to regulate these new activities that transcended the boundaries of national control. This might have been accomplished by the creation of separate international governmental machinery independent of the political instruments already at hand for dealing with the relations of states as political entities. But up to the present time the public concerned with the regulation of these new international activities has made use to a large extent of the existing means of conducting international intercourse. This has been partly the result of habit and partly because the concurrent rise of popular government has made the instruments of intercourse between states more responsive to the needs and desires of the people at large. However, the introduction of this new kind of international regulation has necessarily been accompanied by fundamental changes in the forms and methods of conducting foreign relations and by the introduction of new forms to deal with those activities which the existing political machinery was not competent to handle.

Thus, official international contact between states is no longer confined to the diplomatic relations of their sovereigns, but embraces nearly every branch of governmental activity—communications, sanitation and public health, labor, agriculture, finance, commerce, etc. Many treaties and other international agreements are now made in the name of states rather than of personal sovereigns,[3] and, instead of becoming effective on the mere approval of the head of the state, they are generally subject to ratification by national legislative assemblies. International intercourse in non-political fields is not confined to fully sovereign states, but often includes on an equal plane autonomous subdivisions of states. Even private organizations representing international interests are being accorded official recognition in public international conferences dealing with these interests. Finally, in the regulation of these new activities, the diplomatic officer representing the political interests of his government is being gradually replaced by the technical expert representing the interests of the people participating in these activities.

In brief, the international regulation of activities that do not coincide with the geographical boundaries of existing jurisdictions has made necessary the development of new types of collective action

[3] One reason why this practice has not become universal is the present peculiar constitutional situation of the British Empire. See p. 186.

which can deal with interests and transactions from the standpoint of the whole public affected by them. It is in connection with the appearance of these new activities that the international conference has received its most notable development.

CONFERENCE AND CONGRESS

In this study, the word *conference* will be used to describe all public international meetings, whether they be officially known as *conferences* or *congresses*. There was undoubtedly at one time some distinction between these two terms, the word *congress* being used to describe those gatherings at which sovereigns or their principle ministers were present, and the word *conference* being reserved for those meetings of lesser importance that were attended by subordinate ministers and resident diplomatic agents.[4]

But whatever value the distinction between congresses and conferences may have had in the past has disappeared in current usage, and it is impos-

[4] See, for example, the following extract from the "Polignac Memorandum" of October 9, 1923, printed in part as Appendix B to the Cambridge History of British Foreign Policy, II, (1815-1866), p. 634:

"In observing upon what Mr. Canning had said, with respect to the peculiar state of Great Britain, in reference to such a Conference [Concert], the Prince de Polignac declared [that] he saw no difficulty to prevent England from taking part in the Conference [Congress] however she might now announce the difference in the view She took of the question, from that taken by the Allies."

To this passage is appended a footnote saying that the words enclosed in brackets "were altered because Canning admitted that Great Britain might enter a Conference (i. e. of subordinate Ministers) but would not take part in a Congress (i. e. of leading statesmen)."

sible to deduce anything as to the nature of a gathering by reason of the fact that it is called the one or the other. Some authorities still attempt to discover some characteristic differences between them, but, as Oppenheim tersely observes, " All such alleged differences vanish in face of the fact that the Powers, when summoning a meeting of representatives, use the terms ' congress ' and ' conference ' indiscriminately."[5] Oppenheim further points out that " It is not even correct to say that the more important meetings are named congresses, in contradistinction to conferences, for the Hague Peace Conferences of 1899 and 1907 were, in spite of their great importance, denominated conferences." So was the Paris Peace Conference of 1919, in spite of the fact that it was attended by the head of a state in the person of President Wilson, and was fully as important in the subjects considered as any " congress " ever held.

[5] International Law, 3rd ed., I, 645.

CHAPTER II

Factors Determining Conference Procedure

What are the factors, if any, that may determine the course of conference procedure, aside from mere considerations of immediate convenience? Five possibilities suggest themselves: 1. A written constitution or rules of procedure stipulated in advance of the organization of a conference; 2. customary law; 3. the conceptual structure of the international community; 4. the character and purpose of the conference itself; and 5. physical limitations inherent in the conference method.

RULES ACCEPTED IN ADVANCE

In regard to the first factor little need be said. It has already been remarked that the public international conference is not an established instrument of a duly constituted political society and that no existing agency has the power to lay down rules of procedure or determine the competence and organization of conferences in general. Legally, each conference or series of conferences starts *de novo* in these matters. Of course, where any rule or mode of procedure is stipulated beforehand, acceptance of an invitation to a conference is acceptance of that rule. In the case of periodic conferences, a statute and rules of procedure are usually drawn up by the

first conference for subsequent conferences. But these can obviously be modified by subsequent conferences in the same manner in which they were made, unless the constitution of the union or association provides a fixed manner for such modification. The majority of conferences, however, meet without any rules or modes of procedure stipulated in advance.

It has already been noted in the Preface that the Committee of Experts appointed by the League of Nations for the progressive codification of international law gave consideration to the possibility of establishing by conventional law a code of procedure for international conferences in general, but that the attempt was finally abandoned and the subject referred to the Secretariat of the League for further study. Whatever code of rules may result from this study will be merely in the nature of a guide rather than a set of binding obligations.

CUSTOMARY LAW

In the absence of any conventional agreements on procedure for international conferences, the next possible source of fixed rules would be customary law. To determine whether any such rules exist requires some examination of the procedure of past conferences. It may be said at this point, however, that such a study does not reveal the existence of any rules of conference procedure that, by dint of long usage and general acceptance, may be said to have

acquired legal force or sanction. Apparently no phase of procedure has been rendered exempt by customary law from alteration by the arbitrary will of the parties without incurring legal penalties.

Of course it is possible to find many usages of conference procedure that have been consistently followed over a long period of years. In deciding any procedural matter, the most natural and convenient course is to follow what has been done in similar situations in the past. But it is necessary to recall that not all usages consistently followed over a long period of time become customary law. Only in case a departure in a particular instance from an established usage brings into play the legal machinery of the community and makes applicable such sanctions as may exist for the violation of legal rules, can it be said that a customary rule of law exists. And it is to be observed that the public officials entrusted with the determination of legal obligations do not ordinarily decide that a particular usage has become law unless there is some reason for believing that a fixed and predictable form of acting would be desirable for the community as a whole, regardless of the exigencies of particular instances. Where it is obvious that no one would be damaged by a change in a particular manner of acting at the will of the immediate parties to the transaction, then it can be safely predicted that the officials who control the legal machinery of the community will not recognize that manner of acting as having acquired the charac-

ter of law, no matter how many years it may have been observed.

Thus, if over a long period of time, international conferences were consistently opened by three taps with a gavel, no one would be apt to seek legal redress if a particular conference were opened by the ringing of a bell. For it is not apparent that any one would be inconvenienced or damaged by this change. On the other hand, if we suppose that over the same period of time the practice were universally followed of transacting business in plenary session only when a quorum were present, the legality of action taken in a particular case when a quorum was not present might conceivably be successfully attacked, since it is readily foreseen that those relying upon the observance of the custom might be damaged by an unannounced departure from it.

From a study of all the public conferences of the last century it is possible to discover perhaps four well-established usages or traditions in procedure, but all four of these have been departed from in conferences since the World War. The first is the requirement of unanimous consent for the adoption of any proposal; the second is the requirement that all representatives must be equipped with "full powers"; the third is the election, as president of the conference, of the foreign minister or chief delegate of the country on whose soil the conference is held; and the fourth is the use of the French lan-

guage in the conduct of the proceedings. Only the first two of these have even the appearance of customary rules of law, the last two being obviously mere convenient usages or acts of courtesy, which could be departed from whenever there was a reason for doing so.

But it will readily appear on examination that the first two of these usages do not arise out of accepted custom in conference procedure but out of the conceptual structure of the international community and the character and purposes of the particular conferences at which they have been followed. The rule of unanimous consent is merely another way of saying that when independent entities voluntarily confer for the purpose of striking a bargain among them, there is no bargain unless they all agree. Most of the conferences of the last century were of this bargaining type and naturally followed the unanimity rule. But there have been many other conferences that were not of this type and in which this reason for the unanimity rule was not present.

The same thing is true in regard to the requirement of "full powers." Where a conference is made up of independent states dealing with each other as political units, it is obvious that the delegates cannot act on behalf of their respective governments in a representative capacity unless they have been granted due authority to do so. It is likewise obvious that in such a conference the delegates can only act as representatives of political units and not as indi-

viduals. But it will later be shown that other types of public international conferences have been held in which interests have been represented as well as governments and in which the reason for the " full-power " requirement was no longer present.

STRUCTURE OF THE INTERNATIONAL COMMUNITY

It hardly need be said that the conceptual structure of the international community prevailing at any given moment is an element in the determination of conference procedure, since that structure provides the background in which the phenomenon of the international conference takes place. The current concepts of state personality and of the relations of states to each other are necessarily present in any conference in which these abstract entities are represented as participants. But these concepts, being in fact utilitarian in origin and evolutionary in nature, are themselves subject to change with altering conditions. It has already been pointed out that important underlying changes have been taking place in recent years in the facts of international life and that these changes will sooner or later have to be recognized in the juridical concepts by which these facts are sought to be explained and systematized.[1]

[1] Habits of traditional thinking and intellectual subservience to authority will undoubtedly delay these conceptual changes, but will not postpone them indefinitely in the face of pressing needs for new forms of social control.

Many instances may be found in which a literal application of traditional concepts of state personality to conference organization and procedure has severely limited the scope of effective action of particular conferences.[2] Many other instances will be found, however, in which such limitations have been avoided, either by convenient fictions [3] or simply by ignoring incompatible general doctrines which might operate to defeat desired ends of collective action.[4] The prevailing atomistic conception of the international community is, to be sure, a limiting factor in the determination of conference procedure, but only to the extent that the recognized advantages of maintaining this conceptual system intact are not outweighed by the advantages to be gained in particular instances from the adoption of new modes of collective action.

PURPOSE OF THE CONFERENCE

The fourth and most important factor in the determination of the organization and procedure of any conference is the character and purpose of the conference itself. It seems hardly necessary to point out this functional nature of conference procedure,

[2] As, for example, the doctrine that the equality of states requires representation of every member of a conference not only in the plenary sessions of the conference but also on every committee.

[3] As, for example, the resort to "quasi-unanimity" and to the use of the *voeu* to escape the limitations of the unanimity rule.

[4] As, for example, the recognition of subdivisions of states on an equal plane with sovereign states in the conferences of many international unions.

in view of the fact that the conference method is itself nothing more than a tool for achieving desired substantive ends. However, this factor has been frequently overlooked by conference officials in the past in their attempts to find some basis of authority in tradition or in logical deduction from general principles for the solution of their procedural difficulties.

A study of past conferences discloses that in most procedural matters there is a definite correlation between the character and purposes of individual conferences and the organization and procedure that they have adopted. It also appears that the basis of this correlation is purely utilitarian: that is, that it concerns itself only with the suitability of the process to the achievement of the immediate end in view.

This does not mean that every conference is a law unto itself and that there is no common ground of procedure among them. Quite the contrary is the case. It will be found on examination that the conferences so far held fall into a few more or less distinct categories according to the purposes for which they were convened, and that an appropriate procedure exists for each one of these categories. This fact is of major importance, since it provides us with a useful basis of systematizing our knowledge regarding conference organization and procedure and making it available for guidance in future conferences. At the same time, it is necessary to remember that the origin of most of these constant

elements of procedure is workability and not authority, and, hence, any general conclusions drawn from them are mere working hypotheses, subject to revision in the light of changing conditions of international life.

PHYSICAL LIMITATIONS

Finally, we may take note briefly of certain physical limitations inherent in the conference method as applied to the relations between nations.

First, it will be readily observed that the mere matter of size is an important factor in determining the course of conference procedure. This is true whether the conference be one of diplomats or of dentists. It is common experience that where a large number of persons confer together for the purpose of reaching a common agreement, certain difficulties of procedure are encountered which are not present in small gatherings. There seems to be, in fact, a definite limit to the size of the group which can carry on an intelligent exchange of views without formal organization. This limit varies somewhat with the character and composition of the conference, but it exists for every deliberative body no matter how homogeneous. Beyond this point, some control must be exercised over the course of the debate if complete confusion is to be avoided. In a group of five or six it is quite possible to carry on a discussion informally and without a fixed procedure. In a group

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of fifty or sixty this is out of the question. There must be a directing head with power over the course of the debate. There must be smaller bodies created to examine questions on which there is a diversity of views and to formulate definite proposals to be accepted or rejected by the larger body. There must be a definite program and a formal way of presenting and acting upon proposals. The individual delegates, no matter how exalted in rank, must be subjected to the control of some agency acting on behalf of the whole body. This is not a question of equality or independence, but of human behavior. It applies equally to an international conference and to a faculty meeting.

In international conferences an extreme interpretation of the doctrine of equality has sometimes led to a disregard of these physical limitations, but always with unfortunate results. Thus, at the Hague Conferences the rule of equality was interpreted to mean that all the member states must have equal representation on all the committees of the conferences. As a result, the average number of members of the committees of the second conference was ninety-three. One hardly need look any further for an explanation of the difficulties of agreement that characterized that conference. At the Genoa Conference the same rule prevailed, and it is recorded that at the first meeting of one committee some two hundred and fifty delegates crowded into the com-

mittee room.[5] It is needless to say that a committee of this size could accomplish nothing of value.[6]

Even the debated question of secret sessions comes under this head. Entirely apart from all moral factors, a delegate speaking to a handful of colleagues whom he knows acts in a very different manner from one speaking before an audience whom he does not know. Immediately the discussion becomes more formal and restrained. The members must consider the effect of their words and actions, not only upon their colleagues, but also upon the public at large. In controversial matters, tentative proposals leading to possible compromises may be made in secret session which could never be allowed to become the subject of public discussion. It is common knowledge that in conferences where public sessions are the rule, most of the real work is done by small groups acting in private. This is not necessarily because they have anything to conceal, but because of the psychological difficulties of carrying on a free discussion in public session. If we were to insist upon a strict interpretation of "open covenants openly arrived at," the conference method would lose much of its present value.

Another physical limitation inherent in the conference method is the necessity of a common medium

[5] Aubrey L. Kennedy, Old Diplomacy and New, 357.

[6] This rule is still generally followed in "political" conferences, but its effects are avoided either by the appointment of small subcommittees or by having all committees meet at the same time.

of expression in debate. Formerly the proceedings of international conferences were customarily conducted entirely in French, and a command of this language was an essential part of the equipment of conference delegates. So long as the conference method was confined to the field of diplomacy this did not present an insuperable obstacle, since French had long been accepted as the common medium of expression in that field. But with the growth in size and scope of conferences and the appearance of the " technical " delegate, who could not be expected to have a knowledge of French as a regular part of his equipment, the language question became a very troublesome one. At the Paris Peace Conference in 1919, English was adopted as an official language on an equal plane with French, and this practice has since been followed in the proceedings of the organs of the League of Nations and in all conferences held under its auspices.[7] It is also customary to allow delegates to speak in any other language they desire, but if they do so they must furnish a translation into French or English at their own expense. Strenuous efforts have been made in the Assembly of the League to have Spanish introduced as a third official language, and it was even seriously argued that the doctrine of the " equality " of states required that

[7] Under this arrangement, delegates may speak in either French or English, and a translation of their remarks into the other language is made immediately afterward. Records and documents are also printed in both languages, and the two versions are given equal validity.

this be done. But the obvious difficulties of carrying on the proceedings of a conference in three languages and the possibility that if Spanish were admitted the German-speaking nations would make a similar claim on behalf of their own language have, up to the present time, prevented this proposal from being accepted.

While the general adoption of two official languages has unquestionably widened the scope and usefulness of the conference method, it has at the same time greatly impeded the tempo of debate and doubled the work and expense of issuing conference records. Considerable improvement is to be looked for, however, through the recent perfection of a telephonic device by means of which conference delegates will be able to listen to an oral translation of speeches simultaneously with their delivery.

CHAPTER III

Types of International Conferences

Conferences may be classified in an infinite variety of ways, depending upon the particular facts about them that it is desired to throw into relief. Our present purpose is to find a scheme of grouping that will reveal a maximum of their common elements of organization and procedure.

A classification from this standpoint has already been provided for us in the Report of the Committee of Experts appointed by the League of Nations for the progressive codification of international law. Unfortunately, the groupings adopted fail to shed much light on conference procedure, partly because there seems to have been an insufficient examination of the underlying factors that determine procedure, and partly because too great reliance was placed upon classical terminology, carrying implications from past usage that are not applicable to the new forms of collective action out of which the conference method has sprung. Nevertheless, the classification adopted by the Committee represents the best existing thought on the subject and deserves some consideration.

LEAGUE AND NON-LEAGUE CONFERENCES

The first distinction drawn by the report is between " conferences planned and organized by the

League of Nations and held under its auspices, and all conferences unconnected with the League.'' [1] Assuming that a definite meaning can be found for the phrase '' under its auspices,'' this distinction is obviously relevant to the question of procedure. For, apart from all question of control by the League over conferences held under its auspices, the mere fact that the planning and arrangements of a group of conferences are in the hands of a single permanent agency would tend to give those conferences a distinct pattern and to develop for them a characteristic technique.

In one sense the League of Nations might itself be looked upon as little more than a series of periodical international conferences of independent nations, plus a permanent administrative machinery to carry out the decisions and recommendations of these conferences. But it is now generally agreed that the League is in law a *persona,* that it is a corporate entity with a definite capacity for action and a '' will '' of its own, apart from the separate '' wills '' of its individual members. Its organization and procedure are, therefore, special topics which need not be discussed in a general consideration of international conferences.

But one of the most interesting developments of the League (and one which was apparently not fully foreseen by its founders) is the fact that it has very

[1] Supplement to American Journal of International Law, XX, July, 1926, p. 209.

quickly become the natural center for the coordinated action of the nations of the world in almost every field of international activity. While the League was originally conceived to deal chiefly with " political " questions, the major portion of its activities have, in fact, been concerned with questions not ordinarily considered as such—economic, social, humanitarian, and other matters of public welfare having international aspects. Only brief reference is made to these activities in the Covenant,[2] and, with a few exceptions, it is not specified whether they are to be dealt with by the Council and Assembly of the League as such, or by the members of the League through the usual medium of multilateral conventions.

The practice actually adopted in most cases is that, whenever a particular subject is considered ripe for collective regulation, the Council of the League is requested to convene an *ad hoc* international conference for the conclusion of an appropriate convention or the establishment of permanent international machinery to deal with the matter. The organization of these conferences is usually planned by the regular organs of the League; their administrative staffs are supplied from the League Secretariat; often their presiding officers are nominated by the Council; their expenses are either paid by the League or handled through its financial machinery. Nevertheless, these conferences are not

[2] Articles 23-25.

in fact subordinate organs of the League, but are independent gatherings of independent states. Under the circumstances, there would be no particular reason, from a legal standpoint, why the fact that a conference is held " under League auspices " should be a determining factor in its organization and procedure, since each conference is in theory free to adopt its own modes of action.

However, in practice, the fact that a conference is convened by the League and held under its auspices has a very definite effect upon its organization and procedure. The draft organization and rules of procedure being usually entrusted to the permanent officials of the League, they have naturally made use of their cumulative experience to develop model forms for use in all similar conferences, and the consistent following of these forms may eventually give them the force of customary rules of law. Furthermore, in spite of the actual independence of these conferences from control by the League organs, the fact that most, if not all, of the nations participating in them are also members of the League gives to the actions and recommendations of the League organs in relation to these conferences a peculiar sanction.[3]

For these reasons we find that there are apt to be more similarities of procedure in conferences held

[3] Sometimes it has been thought that the decisions of the League bodies were conclusively binding on these conferences. See, for example, the views expressed at the Barcelona Conference. See p. 162.

under League auspices than in conferences held independently of the League. But these similarities are more the product of habit and convenience than of an essential legal difference in the character and purposes of the two types of conferences.

POLITICAL AND NON-POLITICAL CONFERENCES

The second distinction suggested by the report is between "political conferences and non-political conferences (administrative, economic, social etc.)."[4] This division on the basis of subject-matter is perhaps the most frequently employed classification of international conferences, and yet it is a very unsatisfactory one because of the many meanings that can be given to the word "political." According to the above-quoted passage, political conferences are apparently those which do not come under the headings "administrative, economic, social, etc." But in another sense, all questions, regardless of their origin, become "political" as soon as they enter the realm of regulation by agencies of government. It has recently been said that a question becomes "political" "whenever enough persons are interested in it to make it worth while for politicians to give it their attention."[5] While Secretary Hughes

[4] Ibid., p. 209.

[5] Charles P. Howland, etc., Survey of American Foreign Relations, 1928, p. 313. Professor Manley O. Hudson has said, "any activity which the politicians undertake would seem to me to become political by reason of their undertaking it." Current International Cooperation, 74.

insisted that the United States could properly participate in a settlement of the reparations problem along the lines of the Dawes plan, because it was economic and not at all political,[6] M. Theunis, in his closing speech as President of the Preparatory Committee for the Economic Conference of 1927, insisted as firmly that " every economic question is by that very fact a political question."[7]

Because of this extremely vague current use of the terms " political " and " non-political," the distinction drawn by the Committee is of little or no value from the standpoint of procedure, as is shown by the following conclusion of the Rapporteur:

> As regards political conferences unconnected with the League of Nations, the Rapporteur considers that the variety of objects and aims and the complexity of the questions to be discussed, together with the varying number of states taking part and the character of the representatives in individual cases, etc., do not permit of any uniform or universal type of rules of procedure; and this opinion is borne out by practical experience.[8]

Yet there is a useful division based on subject matter, which can be expressed with the terms " political " and " non-political " if the meanings of these terms are derived from a more accurate observation of the facts of present international life.

International activities and relations that at the present time come within the purview of govern-

[6] Howland, op. cit., 313.
[7] Report of the 2nd Session of the Committee, 3.
[8] Op. cit., 210.

mental action and, hence, within the scope of international conferences, are of two types:

1. The relations between the states of the world *as political units.* These include such matters as alliances, boundaries, territorial sovereignty, war and peace, arbitration, neutrality, codification of international law, and, in general, any transactions relating to the character of the state as an international person.

2. The regulation of international activities, transactions, and interest *of individuals* extending beyond national boundaries. These include such matters as international commerce, international land and water transportation, postal, telegraph, and radio communication, public health, labor, agriculture, and a number of other activities and transactions of the people at large now carried out on an international basis.

Activities of the first type may be called " political " and those of the second type " non-political." This distinction provides us with more precise meanings of the two terms than they have heretofore been accorded in current usage.

Formerly all intercourse between governments was of the first type, and practically all international conferences held before the middle of the last century dealt exclusively with political matters. This was the case when our present system of international jurisprudence was formulated, and we accordingly find that system to be almost exclusively de-

voted to the relations of states as political units. Yet the relations of the second type, which owe their origin largely to the mechanical inventions of the eighteenth and nineteenth centuries, have, within a hundred years, grown to enormous proportions and touch the daily life of the individual much more intimately and continuously than the relations of states as political units.

It is obvious that current conceptions of the personality and attributes of states as political units are of primary importance in the organization and procedure of conferences of the first type. States (as distinguished from governments) exist in fact only as mental concepts, and any conference dealing with their relations as political units must necessarily take account of accepted doctrines regarding their nature and powers. Current thought envisages states as independent, equal units in a more or less anarchic relation to each other, and these ideas necessarily influence the methods whereby states do business with each other in all matters affecting their character as political units. From these doctrines are derived the rule of equal representation of all "sovereign" states, the unanimity requirement in voting, and the conception that delegates to "political" conferences can participate only as representatives of sovereign states and only under the instructions of the political head of their respective governments.

But in conferences of the second type, states as political units enter the picture chiefly as convenient jurisdictional and administrative agencies for effecting the common regulation of interests and activities that extend beyond the territorial limits of any one of them. In this collective regulation of the trans-national activities of individuals, the personality and attributes of the state as a political unit are not directly involved and are in fact subordinated to the end of reaching common action. Thus, in the achievement of this aim, the requirement of unanimity in voting is often found to be impractical and is expressly or tacitly modified in favor of some form of majority rule. Representation is not confined to sovereign states, but is often granted to autonomous sub-divisions thereof having local administrative jurisdiction over the subject-matter under discussion. Delegates do not in substance represent the political department of their governments so much as they do the actual public interested in the activity under discussion, and in some cases they derive their instructions from that public rather than from the political heads of their states. More often than not they are experts in the technology of the subject-matter to be regulated rather than in the technique of the political regulations of states.

BARGAINING CONFERENCES AND LEGISLATIVE CONFERENCES

A third distinction drawn by the Report is between " conferences on international conventional

law (codification conferences) and special conferences (conferences settling particular relations between the contracting states.)''[9] The terminology here employed is somewhat vague, but the distinction the Committee had in mind is obviously that between conferences called for the purpose of drawing up general conventions laying down rules of conduct for the international community at large (or so much of it as is concerned in a particular activity) and conferences called for the purpose of adjusting the conflicting interests of several states on a matter of concern to each of them. In the former case the conference is in effect acting as an organ for the community or association of states as a whole, and in the latter case the units are acting for themselves individually.

The distinction may be illustrated by reference to the simple analogy of a group of men gathered together in conference for the purpose of arranging a business deal and the same men meeting as stockholders of a corporation. In the former case, each individual has only his own interests to consider. He is a free agent and may agree to anything he likes so long as it is not contrary to the laws of his community. The negotiators are at liberty to follow any procedure they choose in arriving at their bargain. But, obviously, there must be unanimous agreement among them, a '' meeting of the minds,'' before there

[9] Supplement to American Journal of International Law, XX, July, 1926, p. 209.

can be a bargain. The basis of their action is purely contractual, and the resulting agreement is the several action of the independent negotiators and not of the group of them considered as a collectivity.

If the same group of men meet as stockholders of a corporation for the purpose of transacting corporate business, the situation is quite different. They no longer act as independent units but as parts of an entity. They still act on the basis of self-interest, but in this case their individual interests are bound up in the general interest of the corporation as a whole. The procedure which they may adopt is largely determined by the nature of the association to which they belong. While their action is based on agreement, it is more in the nature of legislation for the organization they represent than the negotiation of a bargain among themselves.

When representatives of states meet in conference for the purpose of forming a military alliance, or fixing their boundaries, or settling peace terms after a war, they are, from the standpoint of procedure, engaged in a bargaining transaction. On the other hand, when such representatives meet together for the purpose of codifying the rules of international law, or of drawing up an international sanitary code, or of establishing freedom of navigation on international waterways, they are acting more in the nature of a legislative assembly for a community or association of states considered as a whole.

It will be observed that this distinction is very closely related to the one previously drawn between political and non-political conferences, since the former are most likely to be of the bargaining type and the latter of the legislative type. The distinction is not the same, however, since it is possible to have political conferences of the legislative type,[10] and " non-political " conferences of the bargaining type.[11]

While this distinction is a fairly obvious one, no terms have yet been invented to describe the two types of conferences. Perhaps the distinction might be made clear by calling them " private " and " public " conferences. For in the former type only the actual participants are immediately interested, and, so far as the rest of the community is concerned, the proceedings are " private." In the latter type the negotiators are acting for the benefit of the whole community or public interested in the subject-matter, and the conference is, as to that community, a " public " organ.[12] But, unfortunately, the terms " private " and " public " have already been appropriated for other uses in connection with international conferences, and it is necessary to invent new terms for these types. In the present work, conferences of the former type will be called " bargain-

[10] For example, The Hague Peace Conferences of 1899 and 1907.

[11] For example, a conference for the allotment of wave lengths in radio broadcasting among a group of contiguous states.

[12] The author is indebted to Prof. John Dewey's The Public and Its Problems for the suggested application of these terms.

ing conferences '' and those of the latter type will be called '' legislative conferences.''

DIPLOMATIC AND TECHNICAL CONFERENCES

Lastly, the report draws a distinction, according to the character of the representatives, between '' diplomatic conferences (diplomatic agents) and technical conferences (experts).'' [13]

This classification is of interest as showing an important trend of development in international relations, but it is of little value from the standpoint of procedure because of the confusion that exists in the use of the terms, and because we find a large number of conferences that cannot be classified in either group.

Properly speaking, the term '' diplomatic agent '' does not refer exclusively to members of the diplomatic profession but includes any representative equipped with '' full powers '' to act on behalf of his government in the matters for which he is appointed (that is, a '' plenipotentiary''). Some authorities have held that only plenipotentiaries could be delegates at public international conferences; that is to say, that all such conferences necessarily belonged in the first category of the above classification. Thus, Dr. James Brown Scott, in his comprehensive work on The Hague Peace Conferences of 1899 and 1907, states as follows: '' A conference, then, is a diplomatic assembly, and the members of the conference

[13] Op. cit., 209.

represent diplomatically their respective nations."[14] Similarly, Sir Ernest Satow defines public conferences as "meetings of plenipotentiaries (that is, official government representatives armed with full powers) for the discussion and settlement of international affairs."[15] This view is in accord with the classical theory that the various nations of the world come in contact with each other only as political units, and that intercourse between those units can only be conducted through the diplomatic channel.

But, as will later be shown, the actual world of international events has moved rapidly away from this conception. There have, in fact, been many important public international conferences composed of delegates who did not, in fact, represent their governments as political units. As an example, the International Economic Conference of 1927 included delegates appointed by governments, but they were spokesmen of economic and financial interests rather than of official governmental policy. They were not equipped with full powers, nor were they under the instructions of the diplomatic branch of their governments. Yet this gathering was essentially a public international conference in the sense that it was convened by governments for governmental purposes, and derived its competence solely from governments.

[14] I, 37.

[15] *A Guide to Diplomatic Practice,* II, 1.

Another example is found in the general conferences convened annually under the auspices of the International Labor Organization.[16] At these conferences each state is represented by four delegates, two representing the government itself and two representing respectively the workers and employers of the country concerned. The latter must be nominated by each government from the private industrial organizations which are " most representative " of its employers or wage-earners, and at the conferences each delegate is entitled to vote individually. It hardly need be said that they are not representing the state as a political unit but the interests of the workers or employers as a class.

Many other instances might be cited to show that the once popular view that public international conferences had to be composed of plenipotentiaries is no longer observed in modern practice.

Formerly, all relations between states were of the " political " variety and all intercourse was conducted through a single channel. As a result, diplomacy came to be wholly identified with the relations of states as political units, and " diplomatic agents " were persons skilled in that particular type of international intercourse. But with the introduction of collective action in " non-political " subjects, the technical expert made his appearance in the field of

[16] See Treaty of Versailles, Part XIII, Articles 387-408.

international conferences, since the regular diplomatic machinery was not equipped to deal with these subjects.

At first, there was a natural reluctance on the part of political heads of states, accustomed as they were to dealing with foreign relations through a single channel, to give these technical experts any power to make decisions in international conferences or to sign agreements binding their governments. It was customary, either to send delegations made up of both technical experts and diplomatic agents (the former to provide the technical knowledge necessary to draw up conventions and the latter to sign these conventions when drafted), or else to hold a preliminary technical conference of experts without full powers for the purpose of drafting a convention and a supplemental conference of diplomatic agents, equipped with powers, to perform the act of signature.

But in recent years these cumbersome methods have largely been abandoned because of a growing recognition that they are unnecessary and not in harmony with modern conditions. This change in attitude may be traced chiefly to the following developments:

1. A general widening out of contacts between governments to include direct communication between all branches of government; that is, a tendency

toward dealing with international relations from an administrative rather than a diplomatic basis.[17]

2. Improvement in the means of communication to the point where delegates are enabled to keep in immediate and continuous contact with their home governments throughout a conference and to obtain approval of agreements before signature.

3. The lessening in importance of the act of signature of international agreements, owing to the universal adoption of the requirement of ratification in order to give such agreements any force.

[17] The extent of this development is shown in the following data on the permanent foreign agencies of the United States abroad, (Howland, op. cit., 89):

	Agencies	Personnel
State Department	450	3641
Treasury	44	105
War	27	147
Navy	12	57
Agriculture	4	12
Commerce	41	297
Shipping Board	5	120
Tariff Commission	1	4
	584	4386 (*sic*)

Professor Quincy Wright comments on this development as follows: (Ibid., p. 90):

"Thus it appears that the conduct of international relations is undergoing a transformation. Instead of keeping their houses closed except for a single doorway—the foreign office of the central executive—states are opening windows and doors everywhere. Cities, states, dominions, legislators, courts, military and naval and commercial attachés, trade commissioners, agricultural and tariff experts are moving onto the international scene, making direct contacts with each other and with the foreign ministers, diplomats, consuls, admirals, and generals who were there before them."

Of the above developments, perhaps the last is most significant of the changing current of international relations. Formerly the signing of a convention was the most important step in making it effective, and under these conditions governments exercised extreme care in granting full powers to sign. But, according to present practice, the signing of international conventions is entirely subordinate to the act of ratification, and, as a rule, this act is not within the control of the branch of the government that is empowered to authorize signature. In other words, international conventions are now signed *ad referendum* in all cases, regardless of the extent of the " full powers " granted to the agents signing them. This fact has resulted in lessening the importance of " full powers " and in a corresponding modification in the relative status of diplomatic agents and technical experts. At many conferences there will be found experts with full powers and experts with limited powers or with no powers at all. And in the General Conferences of the International Labor Organization the act of signature of general conventions has been done away with altogether.[18]

But in spite of the above developments, a distinction is still commonly made between " diplomatic " conferences, at which the delegates are presumably equipped with full powers to sign " definitive " conventions, and " technical " conferences, at

[18] This subject is dealt with more at length in a later chapter. See pp. 167-180.

which the delegates are authorized merely to draw up " draft " agreements for subsequent action by their governments. While there no longer seems to be any observable difference in the binding effect of the products of the two types of conferences, government officials still speak and act as though there were, and so long as they continue to do so it will probably be necessary to retain the above classification.

SUMMARY

It thus appears that for the purpose of revealing their common elements of procedure, conferences may be classified in the following ways: (1) from the standpoint of administration, into League and non-League conferences; (2) from the standpoint of subject-matter, into political and non-political conferences; (3) from the standpoint of the method of dealing with the subject-matter, into bargaining and legislative conferences; (4) from the standpoint of the form of final action to be taken, into diplomatic and technical conferences. The significance of these categories will be more clearly revealed by a consideration of some typical conferences of the past.

CHAPTER IV

Conferences Before 1825

While the public international conference has only recently come into general use in the field of international relations, it is in fact as old as the modern state system itself. Some writers even trace its origin to the Oecumenical Councils of the Christian Church, the first of which was held at Nicaea in the year 325 A. D. It has been said that these councils were, in a definite sense, "international congresses, working toward the establishment of a uniform law for the civilized world."[1] To be sure, their subject-matter was not one that we are apt to associate with governmental activities today, but it was at that time of paramount importance to the political society. The communities of the Christian world were represented in these gatherings by their sovereigns and political delegates as well as by their bishops, and the proposals adopted were subject to the confirmation or rejection of the powers represented. In the matter of procedure, there were plenary sessions, separate meetings of committees, the immediate translation of speeches, and other

[1] Simeon E. Baldwin, "The International Congresses and Conferences of the Last Century as Forces Working toward the Solidarity of the World," Amer. Journal of Intern. Law, I, (1907), p. 565, citing Francis Wharton, Conflict of Laws, I, Sec. 171.

points of resemblance to the conference of the present day.[2] Even the temper of the discussions was not unlike that of some secular gatherings of more recent date. "God grant," wrote the Swedish delegate at the Congress of Vienna of 1815, "that the members of the Congress will not act like the Fathers of the Council of Nicaea, who settled the question of the Trinity with their fists."[3]

CONGRESS OF WESTPHALIA

But the first conference of importance in the present era of inter-state relations was the Congress of Westphalia in 1648, which is commonly spoken of as the birth-place of the modern state system. The purpose of this congress was to put an end to the Thirty Years' War and to adjust the territorial possessions of the monarchs involved in that war. Naturally it was concerned with the ambitions and rivalries of autocratic rulers and not with the regulation of common interests and activities of the people at large, since the people of the different states had few common transactions with each other at that time. The most significant acts of this congress were the acknowledgment of the independence of the Swiss confederation and the Netherlands, and the practical admission that the numerous states of the German Empire were independent of the Emperor. To this extent it was an important constitu-

[2] See J. Saxon Mills, the Genoa Conference, 9.

[3] Fournier, *Die Geheimpolizei auf dem Wiener Kongress*, 227, quoted in W. A. Phillips, *The Confederation of Europe*, 2nd ed., 108.

tional landmark in the evolution of the international society. But the matters with which it dealt touched only in the lightest manner the daily lives of the great mass of people over whom the monarchs exercised their sovereignty.[4]

In the matter of procedure, the Congress of Westphalia bears only a slight resemblance to the conferences of today. Disputes as to precedence and etiquette consumed an enormous amount of time and energy of the delegates, so much so that the conference, which was scheduled to begin on March 25, 1642, did not formally open until more than three years later.[5] It was chiefly to avoid disputes as to precedence between France and Sweden that the ingenious expedient was adopted of carrying on the negotiations simultaneously at two different places, separated by a distance of thirty miles, and giving precedence to the plenipotentiaries of France at one place and to those of Sweden at the other. No actual sessions of the delegates were held at either place. At Münster, where representatives of the Pope and of the Republic of Venice acted as mediators, the proposals and replies of each side were delivered in writing to the mediators who transmitted them to the other side. At Osnabrück, " the first Swedish pro-

[4] The statement often made that the Congress of Westphalia brought freedom of conscience in religious matters to the individual is not supported by the terms of the treaty, which only recognized Catholic, Lutheran, and Calvinist Confessions, and this merely to the extent of the inclinations of the various territorial princes. See David Jayne Hill, History of European Diplomacy, II, 602.

[5] Satow, Diplomatic Practice, II, 7.

posal, framed in Latin, was solemnly carried to the Emperor's Ambassador by a secretary and two mounted men-at-arms of the Swedish embassy."[6] David Jayne Hill, in his History of European Diplomacy describes the procedure of the Congress as follows:

> Of organization, according to the modern idea of an international assembly, there was strictly speaking none; for in the Congress of Westphalia there were neither presiding nor recording officers, nor plenary conferences, nor committees of reference, nor reports of recommendations, nor formal sessions, nor voting of any kind. In truth, there was nothing in its mode of discussing the questions before it to distinguish its business from ordinary diplomatic negotiations except the proximity of the negotiators, their occupation of a neutralized area, and at Münster the presence of mediators.[7]

In like manner, all of the congresses held during the seventeenth and eighteenth centuries were concerned with dynastic matters, with the settlement of wars and the adjustment of territorial possessions of the autocratic rulers of Europe. It was the rulers who had relations with each other and not the peoples over whom they ruled. And it was naturally only those matters of interest to the ruling families that formed the subject-matter of the intercourse between them. The great mass of humanity that makes up the present international public was in point of fact out of the picture.

[6] Ibid., II, 8.
[7] II, 597.

CONGRESS OF VIENNA, 1815

We begin to note a distinct change in the forces controlling the course of international relations by the time of the Congress of Vienna in 1815. Great Britain had become a constitutional monarchy in which the ministry, in its control of foreign relations, bore some responsibility to the electorate. The French Revolution had given, not only in France but throughout the continent, a tremendous impetus to the cause of popular government. To be sure, the sovereigns of Europe outside of England and France were strong reactionaries, determined to maintain their absolute control, but among their subjects there were many who had learned the lessons of popular sovereignty from the French and American revolutions and who were equally determined that the old order should not be reestablished.

"Universal expectation," wrote Gentz (Austrian Delegate and Secretary of the Congress), "has perhaps never been roused to such a pitch as before the opening of this dignified assembly. Men had promised themselves an all-embracing reform of the political system of Europe, guarantees for universal peace, in one word, the return of the golden age."[8] But if we glance at the results of that conference it is obvious that no process had yet been developed whereby these new-born yearnings for the political

[8] Prokesch-Osten, *Oesterreichs Theilnahme an den Befreiungskriegen,* 540, translation from W. A. Phillips, The Confederation of Europe, 2nd ed., 114.

reform of Europe on an international basis could be accomplished. "The Congress," continued Gentz, "has resulted in nothing but restorations, which had already been effected by arms, agreements between the Great Powers of little value for the future balance and preservation of the peace of Europe, quite arbitrary alterations in the possessions of the smaller states; but no act of a higher nature, no great measure for public order or for the general good, which might compensate humanity for its long sufferings or pacify it for the future."

Gentz is here guilty of some oratorical exaggeration, for a few provisions of the Final Act of the Congress have been of lasting benefit to the international community. By stipulating for freedom of navigation on certain international rivers, this conference, for the first time in history, enacted a general principle of conduct aimed at the benefit of the community at large rather than the particular advantage of individual nations. It also provided for the classification of diplomatic envoys and the perpetual neutralization of Switzerland. Castlereagh, upon the strenuous insistence of large sections of the British public, made determined efforts to have included a provision abolishing the slave trade, but the practical difficulties in the way resulted in merely a declaration condemning the traffic. This subject was subsequently dealt with in later general conferences with a greater measure of success.[9]

[9] "With regard to the slave trade, both Castlereagh and his Cabinet were urged on by an almost fanatical public opinion in England. The

For the rest, the Congress of Vienna was wholly concerned with dynastic and territorial matters. It rearranged the map of Europe, restored various dynasties that had been extinguished by Napoleon, confirmed the partition of Poland, united Holland with Belgium, and created the German Confederation.

Nature of the Congress

The most interesting feature of the Congress of Vienna from the standpoint of conference procedure was the confusion that existed in the minds of the delegates as to the fundamental nature of the gathering, and the opinion, firmly held by many of them, that it was something more than a collection of negotiators; that it was, in fact, a kind of universal parliamentary assembly acting on behalf of Europe as a single community. This question formed the subject of one of the most strenuous debates of the Congress, and, although it was finally resolved in favor of the concept of a mere collection of diplomatists in which the Great Powers were dominant, the fact that any other concept could have been seriously maintained marked a significant departure from the traditional conception of the conduct of international relations.

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trade had been abolished in the colonies which we were now handing back to France. The French view was that England, having stocked her own colonies with labour, was anxious to prevent those of other Powers obtaining a similar advantage." (C. K. Webster, The Congress of Vienna, 1814-1815, p. 41).

It will be recalled that the Congress of Vienna met in pursuance of Article 32 of the second Treaty of Paris, which provided that "All the Powers engaged on either side in the present War, shall, within the space of 2 months, send Plenipotentiaries to Vienna, for the purpose of regulating, in General Congress, the arrangements which are to complete the present Treaty."[10] There were eight signatories to the Treaty of Paris, four of whom, Russia, Prussia, Austria, and Great Britain, had borne the main brunt of the overthrow of Napoleon and exercised a preponderant military power in Europe. These latter powers, of course, had every intention of controlling the territorial settlements following Napoleon's downfall. Had they been able to agree among themselves upon these settlements it is possible that the above Article never would have been inserted in the Treaty of Paris. It is certain that they had no intention at the time of submitting these settlements to the decision of a general European assembly, for at the time the Treaty of Paris was concluded a secret article was also signed between the four powers and France, whereby the latter agreed that the disposal of the territories given up by the French monarch and " the relations from whence a system of real and permanent balance of power in Europe is to be derived, shall be regulated at the Congress upon the principles determined upon *by the Allied*

[10] British and Foreign State Papers, I (1812-1814), pp. 169-170.

Powers among themselves." [11] According to C. K. Webster, "It cannot too often be insisted on that, throughout the whole of these negotiations, *the future Congress was intended to be only a ratifying instrument of the decisions of the four Great Powers.*" [12] He further says that the four powers "had put forward the word 'Congress' imprudently, without reflecting upon all the results that the word implied. It had been an expedient to postpone, and perhaps to solve, their difficulties." [13]

But the Allied Powers failed to agree upon any settlement in the interim, and when the delegates arrived at Vienna no decisions were ready for their ratification, even if they had been disposed to submit tamely to the will of the Allied Powers. These delegates had come from all parts of Europe with the definite expectation of participating in the discussions and decisions of a European assembly. Considerable ingenuity was expended by the ministers of the Allied Powers to find a scheme whereby the delegates to the Congress would seem to take part in the discussions without actually having any part in the final decision. But in spite of their overwhelming military power, the Allied Powers had, by calling the Congress, let the situation get somewhat out of their hands. Their embarrassing plight may be read between the lines of the various projects considered by them regarding the procedure of the Congress.

[11] Ibid., I, 170. Italics added.
[12] Webster, The Congress of Vienna, 45. Italics in original.
[13] Ibid., p. 55.

Castlereagh's Plan

Castlereagh submitted an elaborate scheme for convening the plenipotentiaries and presenting them with a *fait accompli.*[14] His comments on it are enlightening:

> The advantage of this mode of proceeding is that you treat the plenipotentiaries as a body with early and becoming respect. You keep the power by concert and management in your own hands, but without openly assuming authority to their exclusion. You obtain a sort of sanction from them for what you are determined at all events to do, which they cannot well withhold and which cannot, in the mode it is taken, embarrass your march; and you entitle yourselves, without disrespect to them, to meet together for despatch of business for an indefinite time to their exclusion, having at the same time the option to confer with any of the plenipotentiaries separately upon the points in which they are more immediately interested.
>
> The further advantage is that, as you meet informally in the first instance as plenipotentiaries and not as a Congress, nothing is prejudged and nothing admitted till the leading Powers have had full time to weigh all questions well and to understand each other. It is quite impossible this measure can meet with any serious opposition.
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> If such a temper should exist in any of the plenipotentiaries, it is better it should be compelled to show itself openly, in order that it may be met and suppressed at the outset.

Baron Humboldt's Views

Baron Humboldt submitted a detailed report asserting that the Congress was without power to

[14] Printed in full in Webster, op. cit., 153-154.

decide the territorial distributions, although this was in fact the main question remaining from the Treaty of Paris. His argument is a labored effort to bolster up a determined course of action rather than an objective consideration of the nature of the Congress. He said in part as follows:

The Congress of Vienna is in no way a deliberative assembly of Europe. For Europe does not form a constitutional whole; and in order that there might be an assembly of this kind, the part that each Power should take in the decision would have to be fixed, which is not and cannot be the case.

What is, then, the Congress of Vienna? This can only be explained historically. The French Revolution and the rule of Napoleon had changed almost the whole political contour of Europe. The present war has put an end to both, but the different political relationships of the Powers have only been fixed in regard to France, and that by the Treaty of Paris. It then remains to complete this general establishment of peace, to replace by new institutions those which the events of the last years have overthrown, and to uproot a few remains of the Napoleonic usurpation which threaten to disturb Europe. In order to attain this end, there have been called to the same place the Plenipotentiaries of all the Princes and States which in one way or another have taken part in the war. By this means we avoid the possibility that particular negotiations between Powers might give birth to dangerous misunderstandings; we are assured that the arrangements which result from these negotiations are not contrary to the general interest, and give them greater force by sanction or at least common recognition; we may, finally, agree on certain general arrangements conducive to the peace or happiness of Europe. By such a procedure we in some manner take the place of the institution of a European republic, forever

impossible in itself. The Congress of Vienna is, then, not a single negotiation, not even a group of negotiations closely related by the same purpose, but simply a complex of different negotiations leading to as many particular treaties, and having no other relation to each other than the general interest of Europe.[15]

In this manner Baron Humboldt sought to justify the treatment of the Congress as a mere collection of negotiators in one spot rather than as a European assembly. But at the same time he explicitly recognized that there were certain matters to be dealt with at the Congress that were of concern to Europe generally and would have to be treated in that manner. In this category he placed the disposition of the troubles relating to the Swiss Confederation and the Kingdom of Naples, the sojourn of Napoleon on the Island of Elba, the abolition of the slave trade, free navigation on certain international rivers, and the rank of ministers of different courts. But even in regard to these European questions he insisted that "all the Powers cannot deliberate at one time, nor with perfect equality," and that it was necessary "to leave the establishment of principles to the six Great Powers—England, Austria, Spain, France, Prussia, and Russia, who would hear the others on the principles which they would like to have set up."

The ministers of the four powers finally agreed that the arrangements for the formal Congress

[15] Ibid., p. 156 (French text).

should be discussed by a larger committee of six powers,[16] but that the settlement of territorial questions was to be left to themselves alone.[17] But Talleyrand, on his arrival at Vienna, energetically set out to block this scheme. He insisted that the appointment of committees to decide the principal questions of the Congress could only be done with the approval of the full assembly of delegates. And he demanded that the whole Congress be convened at once for this purpose. His memorandum on the subject contains probably the first official appeal to principles of law as controlling the proceedings of an international conference. This memorandum states in part as follows:

> The result of his reflections is to approve unreservedly the idea of simplifying and shortening the work of the Congress by charging a certain number of committees to prepare it. But at the same time he considers it undeniable that these committees can only be established and composed by the consent of the Congress, to whose sanction the Project of Declaration (the plan of procedure of the four powers) provides that their work must be submitted; for if the Congress has the right to sanction it, necessarily the Congress alone has the right to delegate the power to do it.
>
> To admit that the Congress has the right of sanction is to agree that the Powers now meeting do not alone constitute it, and that they are simply a part of it. Now, if one part, however considerable, appropriates to itself the right which belongs only to the whole, it would be a usurpation which

[16] That is, the Allied Powers plus France and Spain.

[17] Full text (French) in British and Foreign State Papers, II, (1814-15), p. 556.

the Ambassador of his Most Christian Majesty, if he were inclined to agree with it, would be exceedingly embarrassed in reconciling with his responsibility toward his Government.

The Powers of Europe have only been able and have only wished to meet in order to follow, to consecrate, and to guarantee the principles and maxims of justice and law. It would, then, be most unfortunate if they should violate them at the outset.[18]

After considerable discussion between the ministers of the four powers and Talleyrand, it was finally agreed that the committee of six should be abandoned in favor of a committee of eight representing the powers signatory to the Treaty of Paris, and Talleyrand agreed to a postponement of the opening of the Congress till November 1, providing that the announcement of the postponement should contain a declaration that the procedure of the Congress would conform "to the principles of public law." This apparently innocuous proposition caused a storm to break out in the meeting of the Powers, which Talleyrand vividly described to Louis XVIII in the following words:

At these words there arose a tumult which can only be described with difficulty. M. de Hardenburg, standing up, his fists on the table, almost threatening, and shouting as is usual with those who suffer from the same infirmity as his, was uttering disconnected words. "No, sir . . . . public law is useless. Why say that we will act according to public law? That goes without saying." I answered him that if it went well without saying, it would go still better with saying. M. de Humboldt cried: "What is public law doing here?" To

[18] Ibid., II, 559 (French text).

which I replied: "It puts you here." Lord Castlereagh drew me aside and asked me whether, providing they should yield to my wishes on this point, I would be more tractable afterwards; in that case I could hope that he would be so in the Naples affair. He promised to second me with all his power: "I will speak of it," he told me, "to Metternich; I have a right to an opinion on this matter." "You give me your word of honor?" I said to him. "I do," he answered. "And I," I replied, "give you mine only to be intractable on principles which I cannot abandon." However, M. de Gentz, coming up to M. de Metternich, represented to him that they could not refuse to speak of public law on an occasion of the nature of the present one.[19]

But the Congress did not meet in full session on November 1 nor at any other time. Talleyrand was of course less interested in having the conference conducted in accordance with "principles of public law" than he was in forcing the Allied Powers to admit France on an equal basis with themselves in the discussions relating to territorial adjustments. Having achieved this, no more was heard from him as to the rights of small powers. The committee of eight became in fact a committee of five, and it was thereafter the real directing force of the Congress. "The truth is," says Webster, "that at last the natural and normal organ of work had been found. The committee of five represented the force that governed Europe."[20] It will thus be seen that the question of whether the Congress was some kind of an international assembly with delegated authority

[19] *Memoires du Prince de Talleyrand,* II, 345-347.

[20] Op. cit., 74.

to legislate for Europe as a whole, or merely a collection of negotiators dominated by the Great Powers was finally decided in favor of the latter.

Yet the Congress of Vienna forecasts the beginning of a new epoch in international relations. For the first time there appeared a widespread conviction that these relations might be concerned with something other than the separate interests of monarchs, necessarily opposed to each other, and that they might be conducted on a collective rather than an individualistic basis. The actual results of this conviction as reflected in the procedure of the Congress of Vienna are slight, but they marked the beginning of a tendency destined to grow to a major movement before the end of the century.

THE CONFERENCES FOLLOWING THE CONGRESS OF VIENNA

The years immediately following the Congress of Vienna are of special interest in connection with the development of international conferences; for it was during this period that the first faint attempt was made to deal with international relations in time of peace from the standpoint of general European interests, rather than from the traditional view of the separate and conflicting interests of the individual sovereigns.[21] The instrument adopted for this pur-

[21] "The significance of the European Coalition during the eight years that followed the signature of the Treaty of Chaumont is, that it represented, whatever the motives of the several Allies may have been, an experiment in international government, an attempt to

pose was the international congress or conference. The movement, to be sure, resulted in eventual failure, and, in its collapse, brought temporary discredit on the method of conducting international relations by the conference method. However, this failure was due, not to any inherent fault in the method itself, but to the fact that international relations were still for the most part in the hands of despotic monarchs, and the common interests that were sought to be regulated on a European basis were the interests of these despots in attempting to maintain a passing order of things and their privileged position in that order.

It was the devastating extent of the Napoleonic wars that originally gave rise to the idea among the monarchs of Europe that they had a common interest, first in defeating and eliminating Napoleon, and then in rearranging the European balance of forces so as to make the recurrence of such a disturbance impossible. As far back as 1805 it had been agreed between Pitt and Czar Alexander that when Napoleon was defeated it would be necessary "to form a Treaty to which all the principal Powers of Europe should be Parties, by which their respective rights and possessions, as they shall then have been established, shall be fixed and recognized; and

solve the problem of reconciling central and general control by a 'European Confederation' with the maintenance of the liberties of its constituent states, and thus to establish a juridical system." (Phillips, Confederation of Europe, 9).

they should all bind themselves mutually to protect and support each other, against any attempt to disturb or infringe them. It should re-establish a general and comprehensive system of Public Law in Europe, and provide, as far as possible, for repressing future attempts to disturb the general tranquillity.'' [22] This first vague suggestion of common action in guaranteeing European peace was followed up by the formation of the Quadruple Alliance by the Treaty of Chaumont of 1813, and the Treaty of Alliance of November 20, 1815, which bound Great Britain, Russia, Prussia, and Austria together to maintain, by armed force for twenty years, the territorial arrangements agreed upon, as well as to exclude Bonaparte and his dynasty perpetually from the throne of France.

Article VI of the second treaty is of especial significance, for it established the international conference as the machinery for executing the terms of the alliance. This article (the drafting of which was largely done by Castlereagh), reads as follows:

To facilitate and to secure the execution of the present Treaty, and to consolidate the connections which at the present moment so closely unite the 4 Sovereigns for the happiness of the World, the High Contracting Parties have agreed to renew their Meetings at fixed periods, either under the immediate auspices of the Sovereigns themselves, or by their respective Ministers, for the purpose of consulting upon their common interests, and for the consideration of the measures

[22] British and Foreign State Papers, II, 345.

which at each of these periods shall be considered the most salutary, for the repose and prosperity of Nations, and for the maintenance of the Peace of Europe.[23]

In this article, says one writer, "lay the germ of future international government."[24]

Just a month previous, the mystical mind of Alexander had conceived the Holy Alliance, which in solemn and sonorous terms bound the monarchs of Europe together in Christian brotherhood. While this fantastic document was vague and idealistic in the extreme and talked a great deal of peace and unity, it was a unity of despots rather than of nations. It united these rulers in bonds of Christian friendship and mutual assistance, but not their subjects. It recognized that monarchs might have common interests that could be dealt with by common action, but it did not visualize the possibility that the people themselves might have an interest in the relations between nations.

The vague reaching out in the direction of some sort of international government as typified in these alliances actually did result in the holding of four formal conferences for dealing with matters that were conceived to be of interest to the powers as a whole. But these conferences were merely gatherings of kings and diplomatists negotiating to maintain an equilibrium between the armed forces of Europe. The "Concert of Europe" as visualized in these gatherings has been aptly described as a

[23] British and Foreign State Papers, III (1815-1816), p. 279.

[24] Grant and Temperley, Europe in the Nineteenth Century, 178.

" trade union of kings " united to insure their personal security and possessions. It was identified with the era of despotism and could not last when that era began to wane. The community of interests that brought these despots together was primarily the anomalous condition in which Europe found itself after the Napoleonic wars, and secondarily the realization that only in a balancing of forces could these despots know any peace and security in the enjoyment of their possessions.

Congress of Aix-la-Chapelle

The first of these conferences was held at Aix-la-Chapelle in 1818, and was attended by the Emperors of Russia and Austria and the King of Prussia in person, and also by Metternich and Castlereagh and lesser statesmen.[25] Although it was called a " Congress," the allied statesmen had no intention of encountering again the difficulties they had experienced in controlling the Congress of Vienna. They accordingly issued a circular saying that they desired to avoid the impression that the gathering would have the character of a general assembly at which other European monarchs could expect to participate in the discussions. They expressly reserved to themselves the right to make all decisions, although they at times were willing to hear the representatives of other states on matters in which they were interested.

[25] The Duc de Richelieu attended on behalf of France, but was only admitted to a few of the sessions.

The main objects for which the conference had been called were the evacuation of the military forces of the Allied Powers from France and the funding of the French war indemnity. A substantial agreement having been reached on these matters beforehand, the Congress was able to dispose of them in the first two sessions. Thereafter the main question which occupied its attention was the future relation of France to the Alliance. This question brought out a sharp difference of opinion as to the fundamental nature of the Alliance—a difference that eventually caused its break-up. Alexander was determined to make effective his dream of a universal union of all sovereigns, maintaining their power against the rising current of popular government by a system of international congresses. Castlereagh, on the other hand, was firmly opposed to the idea of a collective guarantee of monarchical supremacy everywhere, and insisted that the alliance was limited to concerted action for the execution of the treaties of Vienna and Paris and the prevention of the return of the Napoleonic dynasty to France.

After considerable discussion the powers finally agreed upon a formula defining in lofty and meaningless terms the purpose and method of their alliance, and recording the reentry of France into the fold of legitimacy. Paragraph four of this formula provides for a system of conferences among the sovereigns "to treat in common of their own interests," and promises that "in the case of these

meetings having for their object affairs specially connected with the interests of the other States of Europe, they shall only take place in pursuance of a formal invitation on the part of such of those States as the said affairs may concern, and under the express reservation of their right of direct participation therein, either directly or by their plenipotentiaries." [26] But none of the statesmen at Aix-la-Chapelle, save possibly Alexander, took these lofty sentiments seriously. Neither in the conferences of the Alliance nor of the European Concert which followed them (with the exception of the Conference of London on affairs of the Netherlands), was any attempt made at equal representation of all interested powers, regardless of their size.[27]

[26] British and Foreign State Papers, VI, 14. An English translation will be found in Edward Hertslet, The Map of Europe by Treaty, I, 572.

[27] The Declaration annexed to this resolution even surpassed it in the expression of lofty sentiments and exalted intentions:

The intimate Union established among the Monarchs, who are joint parties to this System, by their own principles, no less than by the interests of their people, offers to Europe the most sacred pledge of its future tranquility.

The object of this Union is as simple as it is great and salutary. It does not tend to any new political combination—to any change in the Relations sanctioned by existing Treaties. Calm and consistent in its proceedings, it has no other object than the maintenance of Peace, and the guarantee of those transactions on which the Peace was founded and consolidated.

The Sovereigns, in forming this august Union, have regarded as its fundamental basis their invariable resolution never to depart, either among themselves, or in their Relations with other States, from the strictest observation of the principles of the Right of Nations; principles, which, in their application to a state of permanent Peace,

It is interesting to note that the Congress of Aix-la-Chapelle, which met just a hundred years before the Paris Peace Conference, received the first proposal to take steps toward the international regulation of a distinctly non-political subject. This proposal related to the conditions of labor, and was in the form of a petition presented to the Congress by Robert Owen to consider the international fixation of the legal limits of the normal working day.[28] But the record of the Congress does not show that this proposal received any consideration at all. The daily affairs of the people at large had not yet come within the horizon of foreign offices.

At the Congress of Aix-la-Chapelle, Castlereagh again brought up the question of the suppression of the slave trade and proposed that it should be proscribed as piracy under the law of nations. But France declined to accept the proposal, and in this position was supported by the other powers. The result was that nothing was accomplished in this

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can alone effectually guarantee the Independence of each Government, and the stability of the general association.

Faithful to these principles, the Sovereigns will maintain them equally in those meetings at which they may be personally present, or in those which shall take place among their Ministers; whether they be for the purpose of discussing in common their own interests, or whether they shall relate to questions in which other Governments shall formally claim their interference. The same spirit which will direct their councils, and reign in their diplomatic communications, will preside also at these meetings; and the repose of the world will be constantly their motive and their end. (British and Foreign State Papers, VI, 18, English text from Hertslet, op. cit., I, 573-4.)

[28] G. A. Johnston, International Social Progress, 14.

matter save a new oratorical condemnation of the traffic in general terms.[29]

Incidentally it may be noted that the traditional isolationist policy of the United States dates from the time when collective action was confined almost entirely to the political relations of monarchical governments. That policy had no reference, at least in its origin, to coordinated action with European states for the collective regulation of interests common to the people at large. Such interests did not, in fact, exist at that time.

Congress of Troppau

The successful outcome of the Spanish revolution of 1820, whereby King Ferdinand VII was compelled to accept the ultra-liberal Constitution of 1812, aroused in Emperor Alexander a fear for the safety of monarchical government everywhere, and led him to issue a demand for a congress of the new Quintuple Alliance to authorize intervention in Spain for the purpose of restoring the power of the Crown. But this move was strongly opposed by Castlereagh, who insisted that the alliance was not intended as "an Union for the Government of the World, or for the Superintendence of the Internal Affairs of Other States."[30] The holding of a congress was also opposed by Austria and France for the very practical reason that the intervention desired by Alexander was the intervention of the Russian Army,

[29] Cambridge History of British Foreign Policy, II, 238.
[30] Ibid., II, 627.

and they could not contemplate with satisfaction the movement of Russian troops across Germany and France. But similar revolutionary outbreaks in Naples and Piedmont changed the situation for all parties, and a conference was accordingly convened at Troppau on October 29, 1820. This conference was attended by the Emperors of Austria and Russia and the Crown Prince of Prussia, but neither Great Britain nor France sent ministers plenipotentiary, the former merely instructing the British Ambassador at Vienna to watch the proceedings on behalf of his Government. According to Professor Alison Phillips,[31] this was not displeasing to Metternich, "since the inferior status of the representatives of the two constitutional powers gave an excuse for excluding them from the innermost councils of the three powers who were 'less fettered in their forms.'"

On November 19 the three autocracies issued the famous *protocole préliminaire* setting forth the doctrine of intervention in sweeping terms.[32] The word-

[31] Ibid., II, 37. Apparently the United States cannot lay claim to the invention of the office of "unofficial observer."

[32] This protocol stated in part as follows: States which have undergone a change of government, due to revolution, the results of which threaten other States, *ipso facto* cease to be members of the European Alliance, and remain excluded from it until their situation gives guarantees of legal order and stability. If, owing to such alterations, immediate danger threatens other States, the Powers bind themselves, by peaceful means, or if need be by arms, to bring back the guilty State into the bosom of the Great Alliance. (Ibid., II, 37-38).

ing of this protocol clearly showed that the autocratic governments of Europe had come to look upon the Alliance with its periodic conferences chiefly as an instrument for suppressing popular uprisings that threatened the power of kings. Whatever may have been its original conception, it had degenerated into a private arrangement among despots for their mutual protection, and was in no sense a public instrument for the regulation of the common interests of the participating states. The protocol was vigorously opposed by Castlereagh, and the conference was finally adjourned without any agreement being reached between the five powers. In fact, the cleavage between the three states ruled by despots and the two states in which constitutional government had made some headway was wider than ever.

Congress of Laibach

The Congress of Troppau was adjourned to meet again at Laibach in February, 1821. At this conference the five powers were represented as before; and, in addition, the Pope, the King of Sardinia, the Grand Duke of Tuscany, and the Duke of Modena were invited to send plenipotentiaries. An attempt was made to induce the British Government to approve the intervention policy of the autocratic powers in the particular case of Naples, but this failed, and the three autocracies acting alone gave Austria authority to intervene in that country.

The breach between Great Britain and France on the one hand, and Austria, Russia, and Prussia on

the other would have been made complete as a result of the action of the latter powers at Laibach, except for the fact that before the conference adjourned a revolt of the Greeks against their Turkish rulers brought about a new line-up of the powers and injected new life into the congress system. In this matter Castlereagh and Metternich were united in their desire to prevent Russia from taking any isolated action to help along the breaking up of the Turkish Empire, and they recognized that the Alliance was the best means for keeping Alexander from such action. They accordingly patched up their differences and agreed to the summoning of another conference of the Alliance to be held at Verona in 1822, at which they hoped to bind Alexander not to take separate action against Turkey.

Congress of Verona

But before the Congress of Verona was convened, the suicide of Castlereagh and the growing disturbances in Spain again changed the situation. Castlereagh, who, in his later years, had been gradually growing away from the congress idea as it was actually working out, was succeeded by Canning who departed from it altogether. As a result of his strong opposition to the proposal of French intervention in Spain, the Congress finally broke up without reaching any agreement.[33]

[33] Cambridge History of British Foreign Policy, II, 57.

The three despotic members of the Alliance, Austria, Prussia and Russia, signed a circular setting forth the basis on which they would

Following the proceedings at Verona, Canning was confirmed in his opposition to the congress system of the Alliance and when a further conference was proposed for dealing with the question of the revolted Spanish colonies in the new world, he declined to send a representative to it. The congress actually did meet in Paris in 1824, but was a total failure. Later in the same year Alexander endeavored to convene a congress of the Alliance at St. Petersburg to deal with the question of Turkey and the Greeks, but Canning again refused to send a representative of Great Britain, and although the other members of the Alliance were represented at St. Petersburg, the conference broke up without any agreement being reached. This marked the end of the congress system initiated by the Treaties of Chaumont and Paris.

The system of conferences following the Congress of Vienna is notable because it was the first attempt in the history of the present society of states to deal with current international problems by collective action through the conference method. Furthermore, it was the first time that conferences had been called periodically in times of peace for purposes other than the settlement of peace terms after wars. The ultimate failure of this effort was due, not to

give aid to France against Spain, separate copies of which were to be sent by each power to its diplomatic representatives at Madrid, and these representatives were then to be recalled. France eventually invaded Spain, but on her own responsibility and without the direct sanction of the Alliance.

any weakness of the conference method itself, but to the fact that it was used in this instance in a vain attempt to bolster up a passing form of government.

From a procedural standpoint, these conferences were political and of the bargaining type. They adopted no rules of procedure, and, since the number of participants was small, they needed none. Unanimous consent was of course necessary to bind all the parties, but when one or two powers dissented from a proposal, the others on occasion proceeded with the action on their own authority. Such agreements as they reached were embodied in protocols and became effective immediately upon signature of the members of the Congress.

CEREMONY AND PRECEDENCE

Procedural difficulties of the conferences up to this time mainly revolved around disputes as to the precedence and matters of etiquette. We are amused today over the extraordinary seriousness with which forms of ceremony were discussed at nearly all conferences prior to 1850. Delays of weeks and months were not uncommon while delegates fought over the title with which a particular sovereign or his envoy was to be addressed or the order of seating at the conference table. At the Congress of Westphalia it required more than fifteen months from the date originally fixed for the opening of the conference to settle all the questions of etiquette and ceremonial raised by the delegates—such as the question of

whether the envoys of princes were to be addressed as "Excellency" like those of the Electors, and which delegates were entitled to receive the first visit.[34] At the Congress of Utrecht it was found necessary to frame rules of procedure "mainly for the purpose of avoiding controversy about precedence, and especially quarrels between the servants of plenipotentiaries."[35] In some instances it was necessary to alter the building in which a conference was to be held or to erect a new building so that there would be sufficient doors for delegates of equal rank to enter simultaneously.[36] Pomp and display were the characteristic features of these gatherings, and a vital concern to each delegate was the relative magnificence of his entourage. At Münster it is recorded that the personal train of one delegate took an hour to pass a given spot. So that Rousseau's caustic comment on conferences (which Satow indignantly relegates to a footnote) was not without its basis in fact:

> There are formed from time to time amongst us species of general diets under the name of congresses, where we go solemnly from all the states of Europe in order to return again in the same fashion; where we assemble to say nothing; where all public affairs are treated privately; where we deliberate in common council whether the table will be round or square, whether the hall will have more doors or less, whether such and such a plenipotentiary will have his face

[34] Satow, op. cit., II, 6-7.
[35] Ibid., p. 37.
[36] See, for example, Congress of the Pyrenees, 1659, Ibid., p. 13.

or back turned toward the window; whether such and such another will make two inches progress more or less in one visit, and on a thousand questions of like importance, uselessly agitated for three centuries, and surely very worthy of occupying the politics of our own.[37]

But this excessive emphasis upon form and precedence, which seems so foolish to us today, is readily accounted for if we recall the nature and subject-matter of international relations of that period. The conferences of the seventeenth and eighteenth centuries were bargaining conferences of autocratic princes or their personal representatives and the matters deliberated directly affected the power and prestige of those princes. What each delegate got for his own sovereign depended to a large extent upon the conception held by the other delegates of the relative rank and power of his sovereign. Disputes as to precedence may in some instances have been due to personal vanity of individual delegates and in others to a desire to delay the proceedings of a conference (notably at the Congress of Westphalia), but for the most part they were raised by delegates on the positive instructions of their sovereigns, and were the inevitable accompaniment of deliberations concerned with the personal aggrandisement of individual autocrats.

[37] Ibid., II, 2 (French text).

CHAPTER V

Conferences Between 1825 and 1850

After the Congress of Verona the attempt to regulate European affairs by periodical conference of the Great Powers, as visualized in the agreements of Chaumont, Paris, and Aix-la-Chapelle, wholly ceased. It was succeeded by the occasional collective action of the Great Powers which we know under the name of the "Concert of Europe." This concert was not based on any treaty, nor was it provided with any machinery in the form of periodic conferences. It was in reality no organization at all, but merely a name that is given to the concerted action of the Great Powers in attempting to preserve during this period a balance of forces in an unbalanced world.

First Conference of American Republics

We may note in passing that the first general conference of the republics of North and South America was attempted in 1826. This conference was called by Simon Bolivar shortly after the freeing of the Spanish colonies from their mother country and their recognition as independent states. His general purpose was the formation of a system of American states, similar to the European system described above, along the lines of a permanent confederation or a series of diplomatic congresses.[1]

[1] John H. Latané, United States and Latin America, 292.

President Adams agreed to the representation of the United States at this conference, but Congress debated the matter so long that when the American delegates were finally appointed they were not able to reach Panama before the conference had adjourned. Of special interest is the fact that Canning, although firmly opposed to the congress system of Europe, sent a special envoy of Great Britain "to reside near the Congress and to place himself in frank and friendly communication with the delegates."[2]

Several conventions were drafted at this conference, including a recommendation for the formation of a South American League with a congress or assembly meeting every two years. But as has happened so frequently in the case of conferences of the American republics, none of these conventions was ratified and the conference was devoid of practical results. Aside from mere geographical propinquity and similar forms of government there was no particular basis of common interest on which a permanent agency of collective regulation could be established.

CONFERENCES OF THE EUROPEAN CONCERT

Although the conception of international government through the reunions of the Quintuple Alliance, as visualized by the autocratic members of that alliance, was finally defeated by Canning, this did not

[2] Ibid., p. 295.

mean that Great Britain was no longer to participate in conferences of the Great Powers for maintaining the peace of Europe. As a matter of fact, British statesmen had a lively interest in maintaining the balance of forces established by the Congress of Vienna and were fully conscious of the fact that this could only be accomplished by collective action of the powers responsible for that settlement. We accordingly find that, after the collapse of the Congress system at Verona, the Great Powers continued to meet in informal conference during the nineteenth century whenever the territorial settlements of Vienna were threatened.

The Greek insurrection against Turkish rule was coincident with Canning's efforts to break up the Holy Alliance, and, as a result, no general conference of the Allied Powers was held to deal with this troublesome matter, which continued to disturb the European political world from 1820 to the final recognition of Greek independence and the establishment of King Otho on the throne on January 28, 1833. Czar Alexander, who had been dissuaded from taking separate action against Turkey in support of the Greek insurrectionists, did in fact issue a circular on January 12, 1824 inviting the Powers to a congress on the matter, and while Canning did not flatly decline this invitation, he nevertheless put conditions on Great Britain's acceptance that were not agreed to by the other powers. In 1826, Canning

wrote to his brother Stratford Canning, who was then Ambassador to the Porte, as follows:

> You have no reason to dread being shackled by the Holy Alliance. They no longer march *en corps.* I have resolved them into individuality and, having done so, I employ the *disjecta membra,* each in its respective place and for its respective use, without scruple or hesitation.[3]

But Canning's attempts at "single intervention" were not successful, and in order to prevent Russia from declaring war on Turkey he finally proposed a joint Russo-British mediation between Turkey and the Greek insurgents. A protocol to this effect was signed at St. Petersburg in 1826, and at Canning's suggestion was submitted to the other Great Powers for their support. France assented to the protocol, but Prussia declined to adhere to it on the ground of lack of interest, and Metternich protested against it because he could not approve of mediation between a legitimate sovereign and his insurgent subjects. At the request of France, the protocol was turned into a treaty, which was signed by British, French, and Russian representatives at London on July 6, 1827. By an additional article the signatory powers agreed to cooperative action in the work of pacification, and as an agency for carrying out this cooperation they authorized their representatives at London to form themselves into a deliberative body to deter-

[3] Cambridge History of British Foreign Policy, II, 114.

mine the course of action to be pursued. The actual wording of this provision is as follows:

III. Finally, if, contrary to all expectation, these measures do not prove sufficient to procure the adoption of the propositions of the High Contracting Parties by the Ottoman Porte; or if, on the other hand, the Greeks decline the conditions stipulated in their favour, by the Treaty of this date, the High Contracting Powers will, nevertheless, continue to pursue the work of pacification, on the bases upon which they have agreed; and, in consequence, they authorize, from the present moment, their Representatives at London, to discuss and determine the future measures which it may become necessary to employ.[4]

LONDON CONFERENCE ON GRECIAN AFFAIRS

The series of meetings of the representatives of the powers at London that took place in accordance with this provision is of interest because it was really an innovation in diplomatic intercourse and more or less set the style for similar gatherings at frequent intervals during the nineteenth century. Satow, in his painstaking work on Diplomatic Practice, gives these Conferences of London first place on his list of international conferences. But it is difficult to say whether they form a single international conference or a series of intermittent conferences. They were without precedent in the matter of organization, and the act constituting them is very vague as to the scope of their powers. It is quite clear from what went before that the signatory states

[4] British and Foreign State Papers, XIV (1826-27), p. 638.

did not intend to set up a body with powers of definitive action similar to the international congresses that had been held in the past. The meetings were not attended by crowned heads or their responsible ministers. The members were not deputed *ad hoc* nor provided with full powers. They were not assembled to deal with a situation that had happened in the past, but for the purpose of meeting possible future events. They did not sit continuously, but often allowed several months to go by without meeting. In the official record, each separate meeting is called a conference, and nowhere in the record is the series as a whole referred to by that name. Yet it was a continuing body and did not go out of existence after each meeting, to be reconstituted at the next session. Unfinished business was frequently carried over from one meeting to the next.

The body was more than an advisory commission, for it took decisions of importance on its own authority and drafted a treaty that was ratified by the Powers. But it took no steps toward organization or adopting rules of procedure; it elected no president or secretary, and had no bureau or committee. Yet minutes or protocols of each meeting were kept and signed by the representatives present; and in one instance it is recorded that the minutes of the previous meeting were read and approved by the respective plenipotentiaries.[5] It was in effect a

[5] Third meeting, *protocole*, see British and Foreign State Papers, XVII (1829-30), p. 18.

crude form of permanent international conference (permanent during the continuance of a particular political situation), with power to act as a body for the states that had constituted it.

Among other things this body authorized French intervention in the Morea, fixed the territories of the new Greek state, declared it independent, placed it under the guarantee of the Great Powers, and found a king for it.[6]

LONDON CONFERENCE ON AFFAIRS OF THE NETHERLANDS

While this body was still continuing its work, another body of somewhat similar character was constituted to deal with the situation created by the revolt of the Belgians against the Netherlands Government in 1830. This event brought directly into question the territorial settlements of the Congress of Vienna, since it was at that Congress that Belgium and the Netherlands had been united in one Kingdom. The Holy Alliance was dead, but the Treaties of Chaumont and of Paris, which bound the Great Powers to united action in preserving the territorial settlements of Vienna for twenty years, were still alive. After the revolt had got out of his hands, King William, on October 5, 1830, called on the five Great Powers to intervene, and as a result of this action, a conference of the diplomatic representatives of the five powers at the Court of St. James was convened on November 4, 1830, and continued to sit from time to time until the matter was finally

[6] Ibid., XIV, 629; XVI, 1083; XVII, 3, 405; XVIII, 597; XIX, 2, 33.

disposed of nine years later. The authority for this Conference is set forth in the protocol of the first meeting as follows:

His Majesty the King of the Netherlands having invited the Courts of Austria, France, Great Britain, Prussia, and Russia, in their capacity of signatory powers of the Treaties of Paris and of Vienna, which constituted the Kingdom of the Netherlands, to deliberate, in concert with His Majesty, on the best means of putting an end to the troubles which have broken out in his Kingdom (*ses États*); and the Courts above named having displayed, even before receiving this invitation, a lively desire to put an end, in the shortest time possible, to the disorder and bloodshed; have agreed in concert, through the medium (*l'organe*) of their Ambassadors and Ministers accredited to the Court of London, upon the following points:

(1) According to the terms of section 4 of their Protocol of November 15, 1818, they have invited the Ambassador of His Majesty the King of the Netherlands to join their deliberations.[7] . . . .

It is interesting to note that, as stated in paragraph 1 of the protocol, the Great Powers did in this instance carry out their promise made in the Declaration of Aix-la-Chapelle [8] to invite to their conference such other powers as might be directly interested in the subject-matter.

Outside of this fact, the Conference was similar to the series of meetings dealing with the Turko-Greek situation discussed above. It was composed of diplomatic representatives at London rather than delegates deputed *ad hoc*. It met irregularly over a

[7] *Ibid.*, XVIII (1830-31), p. 728.
[8] See above, p. 70.

period of years and was permanent in the sense of being constituted to deal with events that might arise in the future rather than with an existing situation. It had no formal organization and no rules of procedure, beyond the keeping of written minutes as in the case of the other conference. Each meeting is spoken of in the record as a conference, yet unlike the meetings dealing with the Turko-Greek situation, the series as a whole is also spoken of as a conference. Furthermore, during the meetings, the conference appointed commissioners to act on its behalf in dealing with boundary questions. The conference was still a political one of the bargaining type, but since it included representatives of the smaller powers interested in the subject-matter of the discussions, it leaned more in the direction of a legislative body than had the conferences which preceded it. The Great Powers were still in control, but in this case they took all possible steps to find a basis of settlement acceptable to the two smaller powers directly interested, even though that involved a delay of eight years and left the European political world during that time in a state of uneasiness.

Other Political Conferences of the Period

The practice of holding these conferences of resident diplomatic representatives, augmented at times by more important statesmen deputed *ad hoc,* was resorted to frequently throughout the nineteenth century, and has continued up to the present time. The congress system was dead, but the nations of

Europe had grown so close together that peace was impossible to maintain without collective action; and it was impossible, or at least impractical, to secure such collective action without conferences. These conferences were more or less similar in form, and it is not necessary to deal with them separately. The Minister of Foreign Affairs of the country in which the conference was held was customarily, if not invariably, elected as president of the conference, and he in turn designated some member or members of his foreign office staff to prepare the protocols or minutes of the sessions. No rules of procedure were officially adopted and none were really required. Nor was it often found necessary to appoint committees, as the number of nations represented at these conferences was so small as to permit discussion of all matters at plenary sessions. The proceedings were conducted wholly in French and the discussion was carried on orally, supplemented on occasion by written memoranda, which were attached as annexes to the protocol of each session. Since unanimity was required for all decisive action, voting was unnecessary, the expressed opposition of one representative to a proposal being enough to defeat it. All agreements reached were recorded in the protocols (which were then called "definitive") and these, upon being signed, became binding international agreements. If the subject-matter of the agreement was of importance it was put in the form of a treaty that was signed sepa-

rately from the protocol. Usually the protocol of each session was read and approved at the following session, but this was by no means always the case. Full powers were often produced by the representatives, although even this was not always required, particularly where the delegates were intimately acquainted with each other.[9]

There was not even uniform practice as to the terms used. Sometimes each meeting of a conference was itself called a conference, and sometimes a session or "séance." The minutes might be called *protocoles, procès-verbaux,* or *comptes rendus.* Committees were as often called commissions as committees (where there were any). The minutes of the final session embodying the results of the proceedings were called indiscriminately *Acte Final, Acte Général, Protocole* or *Procès-verbal Final.* Outside of the obvious principle of unanimity, the rule that delegates should be plenipotentiaries and could only act in accordance with the powers given them by their governments, and the traditions that the president would be the foreign minister of the receiving country and that the proceedings would be conducted in the French language, there is nothing in these diplomatic conferences before the war that could by the remotest possibility be construed as an established rule or principle of procedure.

[9] Of course where the powers had by written agreement authorized their diplomatic representatives at a particular court to deal collectively with a particular matter, the production of full powers would have been superfluous. See, for example, the London Conference of 1827 for the pacification of Greece.

CHAPTER VI

Political Conferences After 1850

During the second half of the nineteenth century, profound changes were taking place in the social and economic relations of the people at large, but these changes were only very slowly and imperfectly reflected in corresponding changes in the political world, and scarcely at all in the writings of jurists and political scientists. Various conflicting tendencies in the development of international relations are observable in this period, representing on the one hand the survival of traditional conceptions of the nature of inter-state relations, and on the other hand the spontaneous appearance of new methods of dealing with the rapidly altering character of international intercourse.

The course of political relations between European nations during this period was marked by various wars, followed by peace conferences at which the main subjects dealt with were territorial adjustments and the maintenance of the balance of power. Chief among these political conferences were the Congress of Paris in 1856 following the Crimean War, the Congress of Berlin of 1878 following the Russo-Turkish War, the Conference of London of 1867 regarding Luxemburg, the Conference of Paris of 1869 on Cretan affairs, the Conference of Con-

stantinople of 1876-77 on Turkish affairs, and the Conferences at London in 1912 and Bucharest in 1913 on Balkan affairs.

It is not necessary to examine all of these conferences separately, since they differed scarcely at all in method and procedure from the conferences that have been previously discussed. The first two came after important European wars and were attended by leading European statesmen in person. Some attention will be given to them below. The others came after minor disturbances or were convened to prevent the threatened outbreak of hostilities, and were, as a rule, made up of the regular diplomatic representatives of the states concerned, resident at the capital of the inviting power. These latter conferences were similar in form to the diplomatic conferences at London which have been previously described.

CONGRESS OF PARIS OF 1856

The Congress of Paris of 1856 was convened at the close of the Crimean War, for the purpose of embodying, in a definitive treaty of peace, the substance of the four points previously agreed upon by the Allied Powers as forming the program of the war and subsequently accepted by Russia. Of these four points, one, which provided for freedom of navigation of the Danube River, is worthy of note, since it is one of those isolated instances in which autocratic governments undertook collective action

for the regulation of an activity participated in, not by governments, but by the people at large. Another point, which provided for the admission of Turkey into the European system on an equal basis with other states, is also of interest as being a collective act relating to the constitution of the international community.

But perhaps the most interesting feature of this Congress was the issuance of the famous Declaration of Paris, which took place after the definitive treaty had been signed. Count Walewski, the chief French delegate and president of the Congress, proposed at the session of April 8, 1856, that the Congress terminate its work " by a declaration which would constitute a notable progress in international law."[1] " The Congress of Westphalia," he said, somewhat inaccurately, " consecrated liberty of conscience; the Congress of Vienna, the abolition of the negro slave trade and the free navigation of rivers."[2] He accordingly proposed that it would be a worthy task for the Congress of Paris to establish the bases of maritime law regarding the rights of neutrals in time of war. The resulting " Declaration of Paris " was subsequently adhered to by most of the maritime nations of the world and has had an important effect upon the development of maritime law in time of war, in spite of the fact that it was only in the form of a declaration and not a treaty.

[1] British and Foreign State Papers, XLVI (1855-56), p. 125.
[2] Ibid., p. 134.

At the same time that the Declaration of Paris was proposed, the Conference adopted, on the motion of Lord Clarendon, Chief British delegate, a resolution expressing "the wish that states between which any serious misunderstanding may arise should, before appealing to arms, have recourse, as far as circumstances may allow, to the good offices of a friendly power."[3] But this faint-hearted gesture toward the peaceful settlement of international disputes was further qualified by the statement that the wish expressed by the Congress "shall in no way interfere with the exercise by any Power of its free judgment in questions touching its dignity which no Power can be expected to neglect."

Aside from these features, the Congress of Paris showed little, if any, advance over the previous conferences of despotic powers for the settlement of their mutual antagonisms and conflicting ambitions. Says William Roscoe Thayer:

> This Congress, like that of Vienna, registered the views of the governing body in Europe; that body was despotic. Austria, Russia, and Turkey were absolute monarchies; so was Prussia, despite its pretense of constitutionalism. France was in the control of a despot who used any prop at hand to keep him in an upright position. England and Piedmont were liberal, but in both the upper classes shaped the national destiny. The time was, and is, far off when the monarchies of Continental Europe should be administered for and by their people.[4]

[3] Ibid., p. 134.

[4] Hazen, Thayer and Lord, Three Peace Congresses of the Nineteenth Century, 40.

CONGRESS OF BERLIN OF 1878

The Congress of Berlin of 1878 was the last, and in some ways the most notable, example of the old style conference of autocratic statesmen for the adjustment of territorial ambitions and the maintenance of the European balance of power. Called ostensibly for the purpose of revising the Treaty of San Stefano to bring it in line with the Treaty of Paris of 1856, its real purpose was "to impose upon victorious Russia, on the demand of Great Britain and Austria, the mandate of the Powers that she retrench her conquests and spare the Ottoman Empire the *coup de grâce.*" [5] It is chiefly notable for the admirable order and despatch with which the negotiations were conducted. This was due largely to the fact that the leading powers came to the Congress well fortified with secret agreements made in advance, which accurately forecast the outcome of the discussions; and the smaller powers whose interests were at stake and who might have caused trouble in reaching an agreement were excluded from the discussions altogether. It was also due to the vigorous and shrewd presiding of Bismarck, who incessantly drove the delegates onward toward their goal, and never allowed matters of form to obstruct the real business of the Congress.

Like its predecessors, the Congress of Berlin did not start out with formal rules of procedure, but

[5] Henry F. Munro, The Berlin Congress (Pamphlet), U. S. Peace Conference series, 5.

devised its own method to fit the exigencies of the case as it went along. At the first session Bismarck suggested that while it was " incontestable " that a minority of the delegates should be bound to acquiesce in a vote of the majority, resolutions taken by majority vote on " minor " points should be considered as binding on the Congress unless a formal protest was entered by the minority. In committee, voting was done by majority rule, and in some instances, such as the settlement of a boundary dispute, by the vote of the members not directly involved in the point at issue.[6]

Even the ordinary rules of parliamentary practice were not observed. Where a proposal and an amendment thereof were up for consideration, it was not unusual for the main proposal to be acted on first and then the amendment.[7] Likewise, proposals were adopted subject to later amendment as to details. Any procedure was followed which seemed to offer possibilities of reaching a quick decision on disputed points.

[6] See Munro, op. cit., 23. The diplomatic nature of these territorial settlements may be judged from the following description by Prince Hohenlohe, second German delegate, of the method by which one particular point was settled: " After this sitting (of the Congress) the Delimitation Commission at once held its sitting, in order to smooth the differences of opinion between Gortchakoff and Beaconsfield. After a long search we found a small piece which we could take away from the Russians; some mountain ridges, out of which we made a so-called *ligne de conciliation*, which was then accepted. None of us knew whether it was a sensible frontier." (Hohenlohe, Memoirs, II, 224, quoted by Munro, op. cit., 23, note.)

[7] Munro, op. cit., 15.

As a result of its summary procedure, the congress was able to complete its work within a month from the date on which it was convened, in spite of the fact that the three principal statesmen at the Congress—Bismarck, Disraeli, and Gortchakoff—were all in the hands of their physicians, and the latter two were very old men (seventy-three and eighty respectively).

The subject-matter of the Congress of Berlin was wholly concerned with the balancing of European forces and reconciling the territorial ambitions and conflicting policies of the leading powers of Europe in the Near East. It was a political conference of the bargaining type and did not pretend to deal with matters affecting the daily lives of the people at large, or to undertake any positive law-making for the international community. Even Great Britain, where popular government had made the greatest strides, participated actively in the game of territorial aggrandizement. Disraeli on his return from the Conference announced in Parliament that he had brought back "Peace with Honour," meaning, says Parker Thomas Moon, "Peace with Cyprus." And Professor Moon adds that "there were at least some in Parliament who would have had him bring more of this kind of honor." [8]

The representatives of the Great Powers kept the disposition of all questions in their own hands, and although the territories, if not the very exist-

[8] Parker T. Moon, Imperialism and World Politics, 38.

ence, of Serbia, Roumania and Greece were at stake, these powers were not permitted to be represented at the Congress and were only admitted to plead their cause at the discretion of the Great Powers. It is the last of the congresses in which the hegemony of the Great Powers in the political life of Europe was so clearly acknowledged. The growth of popular government in Europe had not resulted in any immediate abating of territorial rivalries. In place of the motives of personal aggrandisement that led to the bargaining of monarchs in the previous centuries, there had been substituted a popular cry for increased national prestige and power fostered by the prevailing spirit of nationalism.

CHAPTER VII

Economic Internationalism

The industrial revolution, which began in England in the latter part of the eighteenth century, did not make much headway on the continent until after the middle of the nineteenth century. Its advent in France is customarily dated from the removal, in 1825, of the prohibition upon the export of machinery from England, enabling French manufacturers to obtain for their own use the mechanical appliances that had brought about such an extensive alteration of the industry and trade of England. It did not get under way in Germany before 1848, and did not reach its full development there until after the creation of the Empire in 1871.[1] But during the last quarter of the nineteenth century, the industrial revolution made steady progress throughout Europe and exerted a profound effect upon the subject-matter of international relations and the methods of dealing with them.

It must not be supposed, however, that the increase of trade following the age of mechanical invention resulted in an immediate lowering of the economic barriers between states, any more than the waning of autocratic government had brought an immediate

[1] Frederic A. Ogg and Walter R. Sharp, Economic Development of Modern Europe, revised edition, 207-212.

recession in political antagonisms. Its first effect was quite the opposite. The new industrial and commercial classes that supplanted the nobility in the control of the political machinery promptly sought to make use of it to stimulate manufacture and trade along national lines. Their activities were directed toward the opening up of markets abroad for their surplus manufactures, the securing of control over the sources of raw materials needed in their industries, and the exclusion of the products of other countries that were in direct competition with their own. Hence, the last quarter of the nineteenth century is marked by a strong reaction toward protectionist policies and a frantic scramble for colonies that might provide sources of raw materials and markets for surplus manufactures of the mother country.[2] Political power, which had formerly served the interests of autocratic monarchs, now came to be used in the international field as an instrument for aiding in the competitive struggle of national industries, and in capturing markets for the absorption of the surplus manufactures and capital of the mother country.

But in the exploitation of backward territories, it was soon discovered that unrestricted competition involved a clash of interests that threatened to upset the whole delicately poised European system. The possible advantages from this competition were not yet sufficiently apparent to warrant such a risk. We accordingly find, in the latter part of the century, a

[2] See Moon, op. cit., chapters i-iii.

growing disposition among the powers to reach a common agreement in the distribution of spheres of exploitation. This disposition received concrete expression in the agreements reached at the Conference of Berlin of 1884-85 on affairs of the Congo, and at the Algeciras Conference of 1906 on Moroccan affairs.

THE CONFERENCE OF BERLIN OF 1884-85

The explorations of Stanley in Central Africa in 1876-78 coincided very closely with the appearance of economic imperialism in European politics. When the vast potential riches of the Congo basin became generally realized, a sharp competition sprang up among European powers as to who should control it. Great Britain, under Gladstone's liberal government had refused the first chance of exploiting the district offered by Stanley. But later, when the King of Belgium planned to obtain exclusive possession of the district, the British Government sought to neutralize this move by a treaty with Portugal recognizing the latter's claims over the mouth of the Congo River.[3] But this move aroused the traders of the other powers, who also sought an interest in the exploitation of the territory.

Bismarck, at the instance of German Chambers of Commerce,[4] objected to the proposed treaty between Great Britain and Portugal, but indicated (after

[3] See Moon, op. cit., 82-83.

[4] See Earl Granville to Lord Ampthill, May 26, 1884, British and Foreign State Papers, LXXV (1883-84), p. 1014.

conversations with the French Government), that his Government was "quite ready and willing to cooperate in obtaining a mutual agreement by all the Powers interested in the question, so as to introduce in proper form into this African territory by the regulation of its commerce the principles of equality and community of interests which have long been pursued in the Far East."[5] Thereafter Great Britain abandoned the Treaty with Portugal, and Bismarck issued the following invitation to a conference on the whole subject:

The growth that the commerce of West Africa has enjoyed for some time has suggested to the Governments of Germany and France the idea that it would be for the common interest of the nations engaged in this commerce to regulate, in a spirit of mutual good will, the conditions which might assure its development and prevent antagonisms and misunderstandings.

For the purpose of achieving this aim, the Governments of Germany and of France are of the opinion that it would be desirable to establish an agreement on the following principles:

1. Freedom of commerce in the basin and the mouths of the Congo.

2. Application to the Congo and Niger of the principles adopted by the Congress of Vienna, with a view to establishing freedom of navigation on several international rivers, principles later applied to the Danube.

3. Definition of the formalities to be observed in order that new occupations of the coasts of Africa may be considered in effect.

To this effect the Government of Germany, in accord with the Government of the French Republic, proposes that repre-

[5] Ibid., p. 1016.

sentatives of the different Powers interested in the commerce of Africa meet in conference at Berlin in the course of this month, if that is possible, for the purpose of arriving at an understanding on the principles just indicated.[6]

The issuance of this invitation brought about an interesting bit of correspondence between the German and British Governments as to the extent of agreement that should be reached on the items on the proposed program of the conference prior to the actual meeting of the delegates. The British Government accepted the invitation of Bismarck "in principle," but requested explanation of the proposed subjects set forth for discussion (such as the meaning the German Government intended to give to the term "freedom of commerce").[7] However, the German Minister of Foreign Affairs replied that "if the points in question could have been arranged by correspondence between the different Governments there would be no use in having a conference, and that, as the particular points upon which (the British Government) asked explanations were to be cleared up by the discussions of the Conference, it would be unnecessary to try to arrive at any previous understanding."[8] To this Lord Granville answered as follows:

So far is it from being unusual that explanations should be given to Powers invited to take part in a Conference that it has not unfrequently happened that it has been thought

[6] Ibid., p. 1018 (French text).
[7] Ibid., p. 1019.
[8] Ibid., p. 1021.

advisable to go further and to invite a preliminary agreement both as to matter and form. . . . . Her Majesty's Government, in the present case, have not suggested such a preliminary agreement, but, though aware that the work of a Conference has often been successful in proportion to the amount of such agreement, have confined themselves to asking for information.[9]

The German Government reiterated its view that the arrival at an understanding of the points at issue would " be more quickly and surely obtained by personal discussion by the representatives of all those interested, than by a previous correspondence between some of them,"[10] and pointed out that there was a difference between holding a preliminary discussion to define the points on the agenda of a conference (as had been proposed by Germany on prior occasions) and endeavoring to arrive at that object by written correspondence.[11] However, upon the insistence of the British Government, Bismarck finally gave a fuller definition of the points contained in his original invitation, and Great Britain thereupon promptly transmitted its formal acceptance of the invitation.

The countries represented at the Conference were Germany, Austria-Hungary, Belgium, Denmark, Spain, United States of America, France, Great Britain, Italy, Holland, Portugal, Russia, Sweden, Norway, and Turkey. It is of interest to note that

[9] Ibid., p. 1023.
[10] Ibid., p. 1027.
[11] Ibid., p. 1028.

the United States, while remaining rigidly aloof from the conferences dealing with the " political " affairs of Europe, was actively represented both at this conference and the Algeciras conference of 1906 dealing with the commercial exploitation of Africa.

The nations were represented for the most part by their diplomatic agents accredited at Berlin. The minutes record that full powers were deposited with the secretariat, but at the same time it was held that diplomatic agents at Berlin possessed the necessary authority for representing their governments at the Conference, without any further powers being produced. In accordance with the usual custom, Bismarck was elected President of the Conference, and he appointed the secretariat, consisting of a French diplomatic officer and two Germans.[12]

The procedure of the conference followed in general that adopted at the Congress of Berlin of 1878. Unlike the previous gathering, however, this conference displayed some aspects of a legislative body, inasmuch as the rules it laid down were for the benefit, not only of the participants, but also of all nations interested in trade with the Congo region. The problem was, in a sense, dealt with on the basis of the whole community interested in it, rather than as a give and take bargain among a few great powers with the smaller powers left out of the picture. The

[12] Bismarck, in accepting the presidency, asked leave to substitute one of his colleagues in that office when other business or the state of his health prevented him from acting. As a matter of fact, he only presided at the first and last meetings.

conclusions of the conference were embodied in a General Act, which provided for freedom of trade and equal protection for the commerce of all nations (not merely the signatory powers), freedom of navigation over the Congo and Niger Rivers, cooperation of the powers in the suppression of slavery and the slave-trade, and the rules to be followed in the further annexation of territory by the signatory powers.

THE ALGECIRAS CONFERENCE OF 1906

The Algeciras Conference of 1906 is of interest for two reasons, first, because it was directly instrumental in preventing an outbreak of war between Germany and France; and second, because the successful outcome of the negotiations was largely due to the behind-the-scenes diplomacy of the President of the United States. The crisis that led to the conference was brought about by French designs on exclusive control in Morocco, which were opposed by Kaiser Wilhelm in the interest of German commercial interests there. The proposal to hold an international conference on Moroccan affairs was advanced by Germany but opposed by France. Russia was at that time engaged in war with Japan, and the German Emperor seems to have felt that under the circumstances he could risk a war with France and England. "It really did look as if there might be a war," wrote Roosevelt, "and I felt in honor bound to try to prevent the war if I could. . . . Accordingly, I took active hold of the matter . . . and . . . got

things temporarily straightened up.'' [13] Declassé, the French Minister of Foreign Affairs, was bent on refusing a conference, but when it was seen that this would mean war with Germany, the French cabinet would not support him, and he accordingly resigned. Rouvier, who succeeded him, was more conciliatory, but also strove to avoid a conference. Kaiser Wilhelm repeatedly appealed to President Roosevelt for support, and the latter was instrumental in inducing the French Government to accept the proposal of a conference, by promising to see that France's '' legitimate rights '' would be protected.

The conference opened on January 16, 1906, at Algeciras in Spain, and was attended by eleven European states, and the United States and Morocco. The main outlines of the settlement had been worked out between the governments in advance, and the principle questions raised at the Conference were the control of the local police force and the composition of the state bank that was to be established in Morocco. For a while a deadlock was threatened on these points owing to certain demands made by Kaiser Wilhelm, but President Roosevelt was busy behind the scenes and, according to Bishop [14] '' fairly compelled '' the Kaiser to yield.[15] '' In this Algeciras matter,'' wrote Roosevelt, '' you will notice that

[13] Joseph B. Bishop, Theodore Roosevelt and His Time, I, 477.

[14] Op. cit., 467.

[15] For an account see Bishop, op. cit., Chapters xxvi-xxvii; Moon, op. cit., 205, and *Die Grosse Politik,* XXI.

while I was most suave and pleasant with the Emperor, yet when it became necessary at the end I stood him on his head with great decision." [16] In spite of the active part played by President Roosevelt in the negotiations, the Senate of the United States, in consenting to the ratification of the treaty drawn up at the conference, solemnly made the following declaration:

Resolved further, That the Senate, as a part of this act of ratification, understands that the participation of the United States in the Algeciras conference and in the formation and adoption of the general act and protocol which resulted therefrom, was with the sole purpose of preserving and increasing its commerce in Morocco, the protection as to life, liberty, and property of its citizens residing or traveling therein, and of aiding by its friendly offices and efforts, in removing friction and controversy which seemed to menace the peace between powers signatory with the United States to the treaty of 1880, all of which are on terms of amity with this Government, and *without purpose to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope.*[17]

Like the previous diplomatic conferences, no rules of procedure were adopted. The procès-verbal of each meeting was signed only by the president and the two secretaries, instead of by all of the plenipotentiaries, as had previously been the practice. In accordance with custom, the Spanish Minister of

[16] Quoted by Moon, op. cit., 205.

[17] William M. Malloy, Treaties, etc., between the United States and other Powers, II, 2183; (Italics added).

Foreign Affairs was elected President, and he in turn appointed the secretariat. The results of the discussions were embodied in an *Acte Général,* to which was added an Additional Protocol empowering the dean of the diplomatic body at Tangier to join his efforts with those of the Moorish delegates to obtain the Sultan's ratification of the *Acte Général.* In addition, four recommendations (or *voeux*) were adopted by the Conference and embodied in the protocols but not in the general act. This Act recognized the independence of Morocco, but provided for international control of its finances and police, and international supervision of its customs.

It is of special interest to note that, whereas in the conferences on political matters heretofore discussed, representation had been, as a rule, rigidly confined to the great powers, in these four conferences dealing with the commercial exploitation of backward territories, representation was granted to all states directly interested. Thus at the Madrid conference of 1880 there were fourteen powers present, at the Berlin Conference of 1884 fifteen, at the Peking Conference eleven, and at Algeciras thirteen.

These four conferences are themselves usually considered as " political " in subject matter, inasmuch as they dealt in large part with the relations of states as political entities. The questions, for example, of the amount of jurisdiction to be exercised by Belgium over the Congo territory or by France

over Morocco were distinctly political questions, as was the manner of future acquisition of unoccupied territory. But at the same time, the real reason why the various powers were interested in these questions at all was *commerce,* and commerce is an activity of private individuals and not of governments. The governments participating in these conferences were not only seeking to protect their own interests and prestige as political entities but were also acting as agents for the commercial and industrial classes who desired to participate in the trade of these regions. We thus see that the private citizen is beginning to come into the field of international relations, and that his entrance has a perceived effect upon the course of those relations.

CHAPTER VIII

Conferences Dealing With the Laws of War

Another new and significant development in collective action that made its appearance in the second half of the nineteenth century was the calling of conferences for the international regulation of the methods of conducting warfare. Among these were the Geneva Conferences of 1864 and 1868 for the amelioration of the condition of wounded soldiers, the Conference of St. Petersburg in 1868 relative to the employment of explosive bullets in warfare, the Conference of Brussels in 1874 on the rules of military warfare, the first Hague Peace Conference of 1899, the Conference at Geneva in 1906 for the revision of the Geneva Convention of 1864, the second Hague Peace Conference of 1907, and the London Naval Conference of 1908-09.

Now these conferences are essentially " political " inasmuch as they deal with the making of war, and war is an activity of governments as political entities. But governments in carrying on war are under the necessity of calling upon their citizens on a large scale for military service, and hence the actual methods of conducting hostilities and the amelioration of the condition of those who participate in them become matters of intimate concern to the people at large. Governments as such have no pressing motives for restricting the use of this instrument of na-

tional policy save financial stringency, and hence the impetus for such action must usually come in the first place from the people at large. In fact, it is only since the growth of popular government that collective action in this field has been given serious consideration.

THE GENEVA CONFERENCE OF 1864

The Geneva Conference of 1864 was aimed primarily to alleviate the condition of soldiers wounded in battle. This movement was originated, not by government officials, but by private individuals who had been aroused by the apparently needless sufferings of sick and wounded soldiers in the Crimean War and in the Franco-Austrian War of 1859. Henri Dunant, a Swiss citizen, who had personally witnessed the military operations of the latter war, wrote an eloquent pamphlet, entitled "*Un Souvenir de Solférino,*" that had a powerful influence in arousing popular indignation. It was his conviction that government officials engaged in the prosecution of a war could not be expected to give adequate attention to the mitigation of the sufferings of the sick and wounded who were no longer effective military units, and that the best remedy of the situation was for governments to authorize the organization of voluntary private associations for this work under suitable arrangements of immunity. His thesis was taken up by the Geneva Society of Public Utility, which, under the energetic leadership of Gustave Moynier, convened an unofficial international confer-

ence at Geneva in 1863 for the purpose of drawing up a comprehensive plan for the care of sick and wounded soldiers. Thereafter the Swiss Federal Council was induced to convoke an official " diplomatic " conference which met in Geneva in 1864 and adopted an international convention on the basis of the work of the 1863 conference.

Some fourteen European states sent representatives to this conference. The United States was invited to attend, but the Civil War was in progress at the time, and Secretary of State Seward is reported to have said that " Our Government, while always ready to forward all humanitarian action, has a well-understood policy of holding itself aloof from all European Congresses or compacts of a political nature. . . . The Government wishes to act as a free agent, with option in the premises, and in its own good time." [1] Nevertheless, the American Minister at Berne and the European representative of the American Sanitary Commission (forerunner of the present Red Cross Society) were authorized to be present at the negotiations, but only for the purpose of " giving and receiving such suggestions as might be thought likely to promote the humane ends which have prompted the meeting." [2]

[1] Quoted in The Sanitary Commission—The Red Cross, by George B. Davis, American Journal of International Law, IV, (1910), p. 552.

[2] Ibid., p. 552. The United States did not sign the convention drawn up at this conference and did not accede to it until nearly twenty years later, after considerable pressure had been brought to bear by private organizations.

It is of special interest to note that, for the first time in history, the delegates to this conference were, for the most part, not monarchs or statesmen or diplomats, but technicians—medical and military experts deputed *ad hoc*. These men naturally tended to visualize the problem as a whole, from its technological side, rather than from the political viewpoint of separate national interests, as is almost inevitably the case in a conference of professional diplomats. This tendency was reflected in the discussion that took place at the first session as to whether voting should be by delegation or by individual representative. The idea that the delegates might participate in the decisions of the conference in their individual capacity as experts rather than as mouthpieces of the political department of their respective governments was in harmony with the technical nature of the problems before them, but was wholly without precedent in the procedure of public international conferences. The novelty of the proposal was sufficient to arouse opposition among the few professional diplomats that were present as delegates, and one of them immediately advanced the view that no voting was in order at all, since unanimity was required on all decisions.[3] This view finally prevailed and the subsequent proceedings of the conference were conducted without the formality of voting. For the rest, the procedure of this conference was simi-

[3] G. Fr. de Martens, *Nouveau Recueil Général de Traités* XX, (1875), p. 376.

lar to previous diplomatic conferences, save that the President alone signed the protocols of the sessions, in place of the signatures of all the plenipotentiaries.

CONFERENCE OF ST. PETERSBURG OF 1868

The Conference of St. Petersburg in 1868 relative to the employment of explosive bullets in time of war was likewise a gathering of military experts to deal with a technical problem, and not a conference of professional diplomats. The delegates were called "commissioners" (*commissaires*), and were not provided with full powers to sign any convention on behalf of their governments. Their task was to consider the possibility of prohibiting the use of a newly invented type of explosive bullet, which was calculated to cause needless suffering beyond that necessary to put troops out of action. The results of the deliberations of the experts were embodied in a "declaration," which was thereafter signed by the diplomatic officers of the various powers accredited to the court at St. Petersburg.[4]

[4] While the apparent motive for calling this conference was humanitarian, it will be noted that this humanitarianism extended only to the prohibition of a means of causing human suffering which was considered to be unnecessary to the successful conduct of hostilities. Thus the final declaration states as follows:

Considering that the progress of civilization should have the effect of alleviating, as much as possible, the calamities of war;

That the only legitimate object which states should endeavor to accomplish during war is to weaken the military force of the enemy;

That for this purpose, it is sufficient to disable the greatest possible number of men;

THE BRUSSELS CONFERENCE OF 1874

The Brussels Conference of 1874 on rules of military warfare was, like the Geneva conferences, initiated by a private organization. In the preceding twenty years there had been four violent and bloody conflicts in Europe and one in America, and the horrors of war were fresh in the minds of the people at large. The result was that many movements were started to bring pressure to bear on governments to lessen as much as possible the needless cruelties that modern methods of warfare entailed. A French society for the amelioration of the condition of prisoners of war invited the governments of Europe to send delegates to an international conference to consider the question, but at the instance of the Russian Government this project was changed into the convoking of an official conference at Brussels for considering the improvement of the laws and customs of conducting warfare in general.

Fifteen countries sent official delegates to this conference. It is stated in the protocols that full powers

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That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The contracting parties engage, mutually, to renounce, in case of war among themselves, the employment, by their military or naval forces, of any projectile of less weight than four hundred grammes, which is explosive, or is charged with fulminating or inflammable substances. (James Brown Scott, The Hague Peace Conferences, I, 21-22).

were verified at the second sitting, but it appears that the delegates were only empowered to discuss the questions submitted without committing their governments to any agreement. A draft declaration was submitted by the Russian delegation, which, after modification in committee, was signed by the delegates as a *Projet de Déclaration,* merely as a record of the proceedings and without binding their respective governments.[5] This declaration was never ratified and never acquired the force of a treaty, but it exerted considerable influence in the development of the laws of war, and served as the basis for the Regulations concerning the laws and Customs of War on Land adopted at The Hague Peace Conference of 1899.

THE HAGUE PEACE CONFERENCES OF 1899 AND 1907

The most important conferences in this group are, of course, the Hague Peace Conferences of 1899 and 1907. So much has been written in regard to these gatherings that it is hardly necessary to review them in detail here. Their importance from a procedural standpoint arises chiefly from their great size, and the admission for the first time of the smaller powers generally on a basis of political equality with the great powers.

The first Hague Conference was initiated, not by a democratic government, but by the autocratic Czar of Russia. In an imperial rescript issued in August,

[5] Parliamentary Papers, 1875, LXXII, (c. 1120).

1898, the Czar called attention to the growing burden of armaments that was oppressing the people of Europe, and suggested the calling of an international conference to discuss means of "putting an end to the progressive development of the present armaments."[6] This rescript was worded in very lofty language, but recent revelations indicate that the calling of the conference was not entirely the disinterested act of humanity that on its face it appeared to be. Gooch, in his History of Modern Europe,[7] gives the genesis of the conference as follows:

> Early in 1898 the War Minister, Kuropatkin, drew up a memorandum for the Tsar, stating that as France and Germany had improved their artillery, Russia and Austria could not lag behind. The cost, however, would be deterrent, and both countries would profit by an agreement not to buy new guns. On being asked for his opinion, the Finance Minister replied that Austria would think that Russia was insolvent, or that she wished to spend the money on some unavowed object. The proposal, moreover, would injure Russian credit. A far better plan, argued Witte, would be for all the Powers to economize on their armaments. The reasoning convinced the Tsar, and the revised proposal was draped in diplomatic phraseology by the Foreign Office. On August 24 Muravieff presented to each of the diplomatic representatives accredited to the Russian Court a copy of the Tsar's rescript.

But whatever the motive may have been for issuing the call, it was received with favor by many governments who were beginning to feel the weight

[6] Full text in Scott, op. cit., I, 39-41.
[7] P. 306.

of progressive armaments. Twenty-six states accepted the invitation and sent official representatives to the conference which met at The Hague on May 18, 1899.

The results of the deliberations are summed up in the Final Act of the Conference, which was signed on July 31, 1899. This Act was not in itself a convention but was "an exposition of the work of the Conference presented to the various Governments for their information and approval."[8] It set forth that the conference had agreed upon three conventions and three declarations which were to form so many separate Acts and be submitted for signature and ratification. It also set forth one resolution and six *voeux*,[9] the resolution and the first *voeu* having been unanimously adopted by the conference and the other five *voeux* having been "voted unanimously, saving some abstentions."

It is unnecessary here to deal with the subject-matter of the conference, save to remark that in regard to the chief subject in the mind of its "august initiator"—the limitation of armaments—nothing whatever was accomplished beyond the adoption of the following innocuous resolution: "The Conference is of opinion that the restriction of military

[8] Sir Julian Pauncefote to the Marquess of Salisbury, July 31, 1899, Parliamentary Papers, Miscellaneous No. 1 (1899), p. 278.

[9] The French word *voeu*, when used in this sense, has no exact equivalent in English. It may be translated as "recommendation," "opinion," or "wish," but none of these expresses the full meaning of the word.

charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.'' [10] In the establishment of The Hague arbitration system lay the chief accomplishment of the conference.[11]

But the idea of limiting by collective action the resort to war that was started at the first Hague conference was quickly taken up by private individuals and organizations all over the world. No specific provision was made by the first conference for the calling of another, beyond the expression of a wish that certain matters not settled by it be referred to a subsequent conference, but the hope was widespread that the work there started would be continued by future gatherings.

At the annual meeting of the Inter-Parliamentary Union held in St. Louis in 1904, a resolution was passed requesting the President of the United States to invite the various governments to send representatives to another conference to deliberate upon the following questions:

(a) The subjects postponed by the Hague Conference;

(b) The negotiation of arbitration treaties between the nations which shall be represented in this conference;

[10] A. Pearce Higgins, The Hague Peace Conferences, 67.

[11] It is an unfortunate commentary on the work of the conference that two years later Great Britain was engaged in a bloody war in South Africa and shortly thereafter the "august initiator" himself embarked upon what was in essence a war of conquest in Asia, having neglected to make use of the means for the pacific settlement of disputes provided by the conference he sponsored.

(c) The establishment of an international congress which shall meet at stated periods to discuss international questions.[12]

President Roosevelt immediately acceded to this request, and, although the Russo-Japanese War was then in progress, caused a circular note to be sent out to ascertain whether the various governments of the world were disposed to attend such a conference. Favorable replies were received from a number of governments, although the Russian Government stated that it could not participate until after hostilities with Japan had ceased. Additional negotiations brought the project to a point where it only remained to issue a call for the conference and settle finally on its program. Meanwhile, the Russo-Japanese War had terminated, and the Czar, remembering the prestige that had accrued to him through the initiation of the first conference, and unmindful of the incongruity of his act in view of the war he had just carried on with Japan, intimated to President Roosevelt that he would like to have the honor of convoking the second conference as well. The President acceded, and the Czar accordingly issued the invitation that brought the powers together for the second time at The Hague in 1907.

This conference was much larger than the first, owing to the fact that upon the insistence of the government of the United States, the Latin-American states had been included in the invitation. Forty-four states sent official representatives to the con-

[12] Scott, op. cit., I, 90.

ference, and the number of plenipotentiaries and technical experts amounted to some three hundred fifty-six. The scope of the agenda was much wider than that of the first conference, and the deliberations lasted for four months.

Following the practice adopted by the first conference, a Final Act was drawn up setting forth the results achieved by the conference. This Act listed thirteen conventions and one declaration, forming so many separate Acts for signature and ratification of the governments. In addition, it set forth the texts of one declaration, one resolution, four *voeux,* and one recommendation. These expressed the " unanimous " views of the conference but were not intended to be submitted for signature and ratification of the governments.

It is very clear from a study of the records of these Hague Conferences that the government officials who brought them into being had only a very hazy conception of the nature of the instrument they were using. There had, to be sure, been large political conferences before, but these had been dominated by a few powerful statesmen who had made all decisions themselves. Most of the political conferences of the nineteenth century had been comparatively small gatherings in which the military power of the states represented made their decisions in effect the decisions of the whole community, and this fact alone had insured a certain degree of coherent action among them. But in the Hague Conferences, for the

first time in history, substantially all the various divergent interests of the whole community were represented on an equal plane, and the element of predominant military power of any one interest was practically eliminated.

The Question of Unanimity

Now it is obvious that there must be a sharp difference of method in reaching agreement between a small gathering of representatives of comparatively homogeneous units engaged in bargaining among themselves and a deliberative body representing all the various shades of opinion in the whole community on an equal plane. In the former case, participation in the discussions is confined to those units among whom ultimate agreement may be expected. The method employed is that of ordinary give-and-take negotiation in the manner in which any bargain is struck between private individuals. In this case, as has already been pointed out, unanimity is obviously necessary in order to bind the parties, since in the absence of a " meeting of the minds " there is no bargain.

But in a deliberative body made up of representatives of all the units of a community visualized as a geographic whole (or, as in the first Hague Conference, of all the states having regular diplomatic representatives at a particular court), it is obvious that the reaching of unanimous agreement presents much greater difficulties. Where the representatives

of all the possible divergent views of a geographical community meet on an equal plane, *universal* agreement among them on political matters (that is, on matters affecting the units as political entities) is, as a rule, only to be expected in two cases: 1. where the individual interests of all the separate entities happen to be approximately identical at a given instant; or 2. where there is a universal feeling that the immediate advantage of collective action to each unit is greater than the possible benefits to be gained from maintaining an individual viewpoint. But in a heterogeneous community representing a wide diversity of interests in political matters, the occurrence of either of the above situations is very rare. In such cases in local political communities it has always been found necessary as a practical matter to adopt some form of majority rule, in order to arrive at effective agreement. In other words, instead of confining collective action to those rare instances in which there is universal agreement, it is accepted that where something more than half of the units of the community have found a common basis of agreement, that basis will be considered as the common agreement of the whole community. In this case, the deliberative body becomes a device for discovering the highest common factor of coincidence among the various diverging views of the community, and an organ for expressing this coincidence as the agreement of the whole community, including the dissenting minority.

But the diplomats who planned the Hague Conferences apparently did not imagine these gatherings as differing in any way from the old time diplomatic conferences to which they were accustomed. It seems to have been assumed from the start that the rule of unanimity in voting prevailing in ordinary diplomatic bargaining would have to be applied equally to these larger gatherings, even when acting in the nature of a legislative assembly for the whole community. Naturally enough, the smaller powers who, for the first time, found themselves admitted on an equal plane to the deliberations of the great powers, were bent on consolidating that position in every possible direction. The unanimity rule was not mentioned in the invitations to the conferences nor in the rules of procedure adopted, but it seems to have been accepted as an essential corollary of the doctrine of sovereignty which admits individual consent alone as the basis of national obligation. The inevitable result was that the conferences largely failed to achieve practical results in anything like the degree that had been hoped.

The common assumption that the rule of unanimity in voting, as developed in the bargaining conferences of the nineteenth century, must of necessity be applied to all types of conferences, regardless of their nature, has proved a serious obstacle to the effective development of the conference method in international relations. While in practice the rule has been frequently modified or ignored in recent

years, it still is advanced by many authorities as an absolute proposition that permits of no exceptions.[13] This view is commonly justified on two grounds: (1) that it is an unavoidable deduction from the conceptual nature of the international community; and (2) that it has the sanction of universal custom.

In regard to the first ground it may be observed that there is, in reality, no law of autonomous logic that compels us to accept the unanimity requirement in voting as the only possible inference from the general doctrine of the independence and equality of states. So far as deductive logic is concerned, it is quite as correct to infer from this doctrine that states are perfectly free to participate in conferences that act by majority rule or by any other conceivable method of reaching an agreement. They exercise their independence in choosing to attend, or not to attend, such a conference, and so long as no other state or group of states can compel them to do so in the first place, their legal independence and equality are amply preserved. As a matter of fact, the inference that sovereign states cannot submit themselves to majority rule without compromising their independence seems to carry within itself a logical con-

[13] See, for example, Satow, op. cit., II, 133; remarks of Secretary of State Hughes at the Conference on Central American Affairs, 1922-1923, Proceedings, p. 80; Scott, op. cit., I, 37; and the authorities referred to in Walter Schücking, The International Union of the Hague Conferences (English translation), p. 209 et seq.

tradiction of the premise of complete freedom of action from which it is deduced.

Regarding the assertion that the unanimity rule has achieved the status of customary law, it has already been pointed out that while the rule was generally (although not universally) followed in the conferences of the nineteenth century, this was due to the particular nature of those conferences rather than to the force of custom. In recent years, other types of conferences have been developed in which the same reason for the resort to the unanimity rule has not been present, and there would seem to be no reason in law why the rule should be automatically extended to cover these new types as well.

While insistence upon the universal application of the unanimity rule is usually based upon one or the other of the above reasons, the motive prompting such insistence is more often to be found in an apprehension of the possible results of a modification of the rule. On the one hand, the governments of the smaller powers (perhaps not without reason, in the light of their past experience) feel that the unanimity rule is an essential guarantee that they will not be subjected to the will of the great powers. On the other hand, the great powers, being heavily outnumbered by the smaller powers, look upon the rule as a necessary protection of their dominant position in the international community. This practical basis of the rule seems to rest largely upon the assumption of a permanent division of interest between the

great and small powers, and wherever this assumption has any basis in fact, it will probably be very difficult to induce governments to accept any substitute for the unanimity rule. However, it will be observed that this opposition of interest between the great and the small powers is generally present only in the field of political relations, and that in collective action on non-political activities, the prestige and power of individual states are not ordinarily involved. Hence in this field we find that governments are often willing to modify the unanimity rule in favor of some more practical method of reaching an agreement.

Even in the case of political conferences, the retention of the unanimity rule as a guarantee of the existing distribution of power and influence would seem to be necessary only to the extent that such conferences are empowered to take action that is actually binding on the states represented. Where, as is now usually the case, the action of conferences is subject to subsequent ratification by the separate states, the insistence upon the rule as an insurance against domination by either group over the other would seem to represent an excess of caution.

Aside from the theoretical aspects of the question, it is undeniably true that the rule has a very practical value in conferences of the bargaining type in preventing the fruitless discussion and adoption of agreements that have no ultimate chance of becoming effective. Usually the subject-matter of con-

ferences of this type is such that no bargain at all can be made unless all of the states directly concerned are willing to become parties thereto. Where it becomes apparent that even one interested state is definitely opposed to a proposition under consideration, there is no use to proceed with the discussion, even though all of the other governments are in agreement. Here the unanimity rule serves as a useful method of saving time and energy that might otherwise be wasted in the consideration of abortive proposals. But in conferences of the legislative type, it is very often desirable that proposals receiving general but not unanimous approval should be allowed to come into force among the states that are in agreement. Under the unanimity rule, however, such action is not possible unless the dissenting minority either abstains from voting or withdraws from the conference altogether. For the effect of the unanimity rule is to give every state represented at a conference an absolute veto over every action taken by the conference.

At the Hague Conferences it was soon found that a strict application of the unanimity rule in all voting would have made practically impossible the reaching of any agreements whatever. There was accordingly developed the fiction of "quasi-unanimity," which recognized as unanimously accepted a proposal receiving a substantial majority of the votes cast. Thus, when the formula arrived at by the First Committee of the First Conference for the

suppression of the use of explosive bullets of a certain size was voted on by the Conference, the minutes solemnly record that it was "adopted *unanimously* with the exception of two votes (United States and Great Britain) and one abstention (Portugal)." [14]

Likewise, the practice regarding voting at the Second Conference was, in the words of one of the chief delegates "obscure and inconsistent." [15] While the smaller states were unwilling to admit in principle that anything less than a unanimous vote could bind the conference, they were compelled to admit in practice that a strict adherence to this rule would have meant complete failure to achieve practical results. Professor Dickinson, who has made a most exhaustive study of the doctrine of equality of states, reaches the following conclusion:

> Conceding that equality of capacity for rights is sound as a legal principle, its proper application is limited to rules of conduct and to the acquiring of rights and the assuming of obligations under those rules. It is inapplicable from its very nature to rules of organization. Insistence upon complete political equality in the constitution and functioning of an international union, tribunal, or concert is simply another way of denying the possibility of effective international organization.[16]

As a practical matter, the unanimity requirement in voting at the Hague Conference was quite un-

[14] Proceedings of the Conference, prepared by the Carnegie Endowment for International Peace, 87; (Italics added).

[15] Zorn, quoted by Schücking, op. cit., 210.

[16] Edwin D. Dickinson, The Equality of States in International Law, 336.

necessary as a means of protecting the small powers from being imposed upon by the larger powers. Their independence was otherwise safeguarded: first, by admission to full participation in the conferences; second, by representation on all committees as well as in plenary sessions; third, by the rule that all states had only one vote regardless of their size (a very different thing from the unanimity requirement in voting, although constantly confused with it); fourth, by the right to refrain from signing the conventions and final act or to do so only under reservations; fifth, by the right of refusing ratification of the conventions altogether or of ratifying them with reservations; and finally, by the right of denouncing the conventions after ratification in accordance with the terms thereof.

Under the circumstances, insistence upon the unanimity requirement in voting was an unnecessary obstacle to the work of the conference. While unanimous agreement is obviously necessary in negotiations leading to the striking of a bargain between independent nations, it is both unnecessary and impracticable in an assembly representative of the whole community and seeking to lay down rules of conduct for the community. It was chiefly because of this insistence on the unanimity rule at the Hague Conference that the London Naval Conference of 1908 was limited in representation to those states among whom ultimate agreement was likely.

Aside from the difficulties created by the unanimity requirement in voting, the organization and procedure of the Conference left much to be desired. These matters were in the hands of the inviting power, through its chief representative, who, according to custom, was elected president of the assembly. Unfortunately, the diplomatic officials who were charged with the preparation for these conferences failed to perceive that by reason of their size and the fact that they contemplated the drafting of rules of conduct for the whole international society, they were more in the nature of parliamentary bodies than diplomatic conferences for the negotiation of political bargains, and required a different method of procedure.

At the first conference, in accordance with the practice of diplomatic gatherings, no rules of procedure were adopted at all. The President merely suggested the division of the conference into three committees for the consideration of the various items on the program. As a result, the procedure of the conference was in a high degree confusing and inconsistent. There was great uncertainty among the delegates as to whether or not they were bound in their deliberations by the ordinary rules of parliamentary practice, and frequently these were departed from altogether. Thus, where a proposal and an amendment were before the conference for consideration, it often happened that the original proposal would be acted on first, and if this was accepted

by a substantial majority, the amendment would never be submitted to a vote at all. [17]

To avoid the confusion that characterized the proceedings of the first conference, a set of rules of procedure was submitted and adopted at the opening of the second conference. But these rules were a mere fragmentary compromise between the procedure of a diplomatic gathering of negotiators and a parliamentary assembly, and did not serve to clear up the confusion that existed as to the nature of the gathering. Thus, in deference to the doctrine of equality, the plenipotentiaries of each power were entitled to place themselves on as many committees as they chose, with the result (already mentioned) that the average membership of each committee was ninety-three, a number entirely too large for the expeditious handling of business. That the Russian officials who designed the organization of the conference conceived of it as purely a gathering of negotiators rather than a legislative assembly is clear from the following remarks of M. de Nelidow, Russian first delegate and president of the conference, during the course of his closing speech:

> When persons unacquainted with our labors judge the work of our Conference, they too often lose sight of the fact that we are not called upon to work out abstract theories, or to seek by speculations of the mind ideal solutions of the problems submitted to us. We are servants of our governments,

[17] See, for example, the protocol of the sixth plenary meeting, Hague Conference reports, prepared by Carnegie Endowment, 82-87.

and we act by virtue of special instructions based primarily on the interests of our respective countries. The higher considerations of the welfare of humanity in general should without doubt serve as guides to us in this, but we cannot help having primarily in view the intentions of our governments when carrying these instructions out.[18]

Dissatisfaction with the organization and procedure of the second conference was widespread among the delegates, and found expression in the terms of the recommendation that was adopted for the holding of a third conference. This recommendation stated in part as follows:

Finally, the Conference recommends to the Powers the assembly of a third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the programme of this third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an International Regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This Committee should further be intrusted with the task of proposing a system of organization and procedure for the Conference itself.[19]

[18] Scott, op. cit., 140.

[19] Higgins, op. cit., 69-71.

LONDON NAVAL CONFERENCE OF 1908-09

Only brief mention need be made of the London Naval Conference of 1908-09, which met on the invitation of the British Government to draft a code of prize law for the guidance of the International Prize Court provided for in the convention of the second Hague Conference. Contrary to the practice followed at the Hague Conference, participation in the London Naval Conference was limited strictly to those states which had a direct interest in the establishment of a common code of rules governing naval warfare. In contrast with the scene at The Hague, the delegates at London carried out their task with an unusual degee of harmony and cooperation, and were able in a comparatively short time to agree upon rules covering every point on the agenda except two. The results of the conference were put in the form of a declaration having the force of a treaty, and this was accompanied by a General Report that was intended to serve as an official commentary on its provisions. But owing chiefly to opposition encountered in the British House of Lords, this declaration was never ratified and never went into effect.

Again, unlike the Hague Conferences, the preparatory work undertaken by the British Government in advance of this Conference was thoroughly done, and it was largely due to this fact that agreement at the conference was so readily reached. The powers invited were requested to communicate in advance their

views concerning the various items on the agenda. The British Foreign Office summarized these views and prepared draft proposals which served as convenient bases of discussion. There was thus avoided the fruitless discussion of proposals having no chance of acceptance that had characterized the sessions of the Hague Conferences.

CHAPTER IX

Non-Political Conferences

The conferences dealt with up to the present time have all been concerned with the relations of states as *political entities*. For the most part they have dealt with the settlement of particular situations or crises brought about by conflicts of the separate political interests or policies of the states concerned. Where they have undertaken the permanent regulation of international activities, these have been, with few exceptions, the activities of governments rather than of individuals.

We have seen that in the beginning the international community of states was like a collection of pyramids touching each other only at their apexes. Then later, as a result of the improvement of communications in the nineteenth century, international relations began to be of interest to private individuals down below the apex, but still only as subjects or citizens of the various political entities. With the rise of popular government, foreign offices became less concerned with the ambitions of monarchs and more with the desires and needs of the new ruling classes. But the activities with which international conferences dealt were still the activities of governments as governments.

We come now to a consideration of a new and different phase of international relations, which was

wholly unknown to the fathers of international law, and to their disciples who expounded the classical juridical structure of the international society. This phase is concerned with the activities and transactions of *private individuals* with each other across national boundaries. Here governments enter the picture only as convenient agencies for effecting the international regulation of these activities. It is in this field of international relations that the greatest progress has been made in the resort to collective action, and it is here that the international conference has attained its highest development.

Many explanations have been given as to why nations have been willing to enter into numerous permanent cooperative arrangements in this field, while doing so only with the greatest reluctance in the fields of relations we have already discussed. Most commonly it is said that the activities in this field are of no great importance in the political relations of states, and hence governments are not willing to fight over them. That is undoubtedly true. These activities do not, in fact, touch upon the question of the existence of the state as a power, or, in common language, the preservation of the "integrity and inviolability" of the state. The essential factors in the life of a state as an international person are its territory, its population, its internal jurisdiction, and its external recognition as an independent unit. These are "political" matters because the existence of the state as a political entity depends upon

them. It is true that the field of international activity we are now considering does not materially affect any one of these factors, and hence is of no particular importance to states *as states*.

But it is of great importance to the people at large, to the mass of private citizens for whom all government exists. For it is primarily concerned with *their* activities rather than the activities of governments. It touches upon their daily lives, directly and continuously, whereas "political" relations of states affect them only indirectly and occasionally. As Professor Pitman B. Potter has said, the means that have been developed for the regulation of these international activities of private individuals:

> constitute to a peculiar degree an application of international government to daily life, continuously, at the instant moment, and directly in contact with the ultimate units of international life, the citizens and subjects of the nations engaged in international intercourse of one sort or another. Other forms of international government, notably arbitration, operate upon international life intermittently, retrospectively, and indirectly, through the national units. The former, it need hardly be said, is much more useful where it is feasible.[1]

Since these activities and interests extend beyond the limits of any one national jurisdiction, it is obvious that they can be more competently regulated by the cooperative action of all the interested states acting as a collective body than by the independent, unrelated action of those states. When, for instance,

[1] Introduction to the Study of International Organization, 1st ed., 282.

the regulation of traffic on international rivers was left to the individual caprice of each riparian state, through traffic was made practically impossible by the number and complexity of local regulations. Likewise, in the matter of radio, when the allotment of wave lengths was left to the unrestricted determination of each geographical political unit, the outcome was such continued interference that this new activity could not be satisfactorily engaged in by anybody. For wave lengths, it was discovered, were no respecters of national boundaries. The same thing has been found to be true in regard to postal and telegraphic services, railway and motor car traffic, sanitation, agriculture, labor problems and a host of other activities and transactions of individuals that transcend national boundaries.

The regulation of these various activities has been accomplished chiefly through the means of international conferences. Necessarily, the form of these conferences has materially differed from the conferences held by states to consider their political relations with each other. For in the latter, the emphasis is primarily upon the division of states into independent units, each engaged in pursuing its own interests and preserving its "integrity" as a state, whereas in the former, the very purpose of the conference is to deal with the regulation of an international activity from the standpoint of the whole public interested in that activity. Hence we find that these latter conferences, when not forced into the

mould of diplomatic meetings, almost inevitably take the form of a legislative body acting for the whole community rather than a group of independent negotiators, each bargaining for the advantage of his own state.

In general, the conferences of this class have not followed any one consistent line of development, but have grown up spontaneously according to the needs of the interest or activity they were designed to regulate. Sometimes a single *ad hoc* conference is held for the purpose of agreeing upon general regulations to be made effective by means of a multilateral treaty or by unification of national laws. More often there is an initial conference at which a " union " or association of the interested states is created for the permanent regulation of the activity in question. This union, by multilateral treaty, establishes general principles of regulation of the activity in question and creates permanent organs to put these regulations into effect and to alter them as circumstances may require. These permanent organs usually consist of a deliberative or legislative body representing all the states in the union and an administrative body working under the direction of the former. In addition, there is created not infrequently a smaller deliberative body (often called a commission) to act continuously in the interim between the sessions of the general conference. The meetings of these various permanent or periodic deliberative bodies are, of course, just as much international con-

ferences as is the original constituent assembly which brought them into being.

It would be quite impossible, in a single volume, to deal in detail with the form and procedure of all of the conferences that come under this classification. Their number runs into hundreds, and their procedure is almost as varied as is their subject-matter.

The largest and perhaps the most important group of these conferences from the standpoint of subject-matter has dealt with communications and transit. In this group, conferences have been held and international regulations adopted dealing with postal, telegraph, submarine, cable, and radio services; railway, automobile, and aeronautical traffic across national borders; navigation on international rivers and through sounds, straits, and other international waterways, and on the high seas.

In the field of commerce and industry, international conferences have been held to legislate upon such topics as the protection of industrial property (patents and trade-mark), copyrights, abolition of bounties on sugar, publication of commercial statistics and of customs tariffs, simplifications of customs formalities, removal of restrictions on imports and exports, prohibition of unfair practices in business, adoption of uniform bills of exchange, elimination of double taxation, and promotion of commercial arbitration.

The protection of public health against the spread of disease is preeminently an international problem,

and we find that a large number of conferences have been convened to deal with it. These conferences have been concerned with the control of plagues, the establishment of effective quarantine regulations, notification of epidemics, unification of drug formulæ, and the formation of international organizations for the promotion of health and for relief in public disasters.

In other fields of public welfare, conferences have been held to devise means of international control of the traffic in opium and other drugs, the liquor traffic in Africa and the North Sea, the slave trade, arms traffic, the traffic in women and children and in obscene publications.

In the field of labor, conferences have been held dealing with labor conditions from many angles, and these have, of course, greatly increased since the establishment of the International Labor Organization. Typical conferences in this field have dealt on an international scale with the questions of hours of labor, night work for women and children, unemployment, minimum age of workers, workmen's compensation, and sickness insurance.

In the field of agriculture, conferences have been held for the purpose of establishing an international institute of agriculture, the exchange of agricultural statistics, the prevention of the spread of phylloxera epidemics in grape producing countries, and the preservation of birds useful to agriculture.

This does not by any means cover the whole field of activities of private citizens that have been sub-

jected to international regulation by public international conferences, but it is sufficient to indicate the scope of the development and its importance in the daily life of the people at large. It is of interest to note that this type of international conference was entirely unknown before the middle of the last century, and yet the number convened since that time exceeds by many times the number of " political " conferences held since the beginning of the modern state society back in the seventeenth century.

Prior to the establishment of the League of Nations in 1920, the international regulation of each of these activities of the people at large was carried on independently of each other, and with little attempt at coordination. Each one had its own permanent organs and its own methods of doing business. There resulted not only a certain amount of duplication of work but also a wide diversity of practice and procedure.

When we recall that the League of Nations was formed at the conclusion of a great war, it is not surprising that the principle purposes of the League, as described in its constitution, are " political." War is a relation between states as political entities, and the primary purpose of the founders of the League was to provide an instrument that would reduce the resort to war or eliminate it altogether. Nevertheless, it was also the intention of the draftsmen of the Covenent that the League should serve as a center of coordination for all the various means

of regulating the international activities of the public at large in times of peace, and to this end articles 23, 24, and 25 were inserted in the Covenant. Article 23 should be specially noted:

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(a) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control;

(c) will intrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs;

(d) will intrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavor to take steps in matters of international concern for the prevention and control of disease.

It will be noted that while the covenant binds the member states to take action on the subjects specified in paragraphs (a), (b), (e), and (f) of this ar-

ticle, it does not specify the procedure to be adopted; that is, whether this will be accomplished by the regular organs of the League acting as such, or by collective action of the members acting apart from the League.

Had the League achieved universality of membership, it might have been found feasible to deal with these activities through the permanent machinery of the League without recourse to separate action of the states. However, the fact that several important countries have not become members has made it necessary to treat these matters more or less independently, and has prevented the placing of some existing international unions under League jurisdiction. But in practice the League has become the natural center for all new projects of collective action and has played an indispensable rôle in fostering such action. It provides a forum for the initiation of projects and machinery for doing the necessary preparatory work. It convenes international conferences to act upon proposals and supplies administrative staffs for these conferences. It likewise provides a suitable means of coordinating the work of permanent agencies established to carry out these projects.

It has already been noted that the holding of international conferences under the auspices of the League has important effects upon the organization and procedure of such conferences, in spite of their actual independence of control by the League.

This will appear more clearly from a brief study, first of an example of the collective regulation of a "non-political" activity prior to the establishment of the League, and, second, of an example of such regulation carried on under League auspices.

CONFERENCES OF THE UNIVERSAL POSTAL UNION

One of the first international activities of the public at large to be submitted to successful regulation by the conference method was the international exchange of postal matter. The handling and distribution of the mails is, to be sure, now universally considered as a government function, but the actual sending and receiving of correspondence is an activity of private individuals.

A natural result of the growth of commerce and industry in the nineteenth century was an enormous increase of correspondence between individuals in different countries. So long as the regulation of the exchange of this correspondence was left to the unrestricted action of each national government, the sending of a letter to a person in another country was a very difficult and hazardous process. Postage rates were high and subject to constant fluctuation, as well as to variations according to the route over which the correspondence traveled. The system caused such an enormous amount of dissatisfaction that Montgomery Blair, Postmaster General of the United States in Lincoln's cabinet, was led to write to the governments with which the United States maintained diplomatic relations and suggest the

holding of an international conference to discuss the difficulties of foreign correspondence. In response to this suggestion a conference was actually convened at Paris on May 11, 1863, at which fifteen states were represented. But the idea of international collective action in a non-political matter was then a novel one, and the gathering was conceived only as a body for discussion and not for the taking of definitive action. The conference did not attempt to draw up a treaty but merely adopted thirty-one " principles " emphasizing the need of reform.

But the matter was not allowed to drop, and after a number of years of agitation a second conference met at Berne on September 15, 1874. In the meantime, the international exchange of telegraphic communications had been successfully dealt with at a conference in 1865, so that a precedent was provided for the collective regulation of international postal exchange.

Since the purpose of this second conference was to adopt a definite scheme of international postal administration, it was planned that the gathering should take the form of a " diplomatic conference." As previously pointed out, this did not mean that it was to be composed exclusively of diplomats, or even that it was to employ diplomatic methods in its negotiations. It merely meant that the delegates were to be official representatives of their governments, and were supposed to be empowered to sign binding agreements on behalf of their governments in the

matters under discussion. It is interesting to note the composition of this " diplomatic " conference, as described by a recent writer:

> In nearly every case they were postal officials of high distinction. Twenty held positions analogous to the Director-General of Posts. Ten were under-secretaries, inspectors, or bureau chiefs. There was one consul, one secretary of legation, two *conseillers,* one finance minister, and a Swiss *Landammann* of the Canton of Glaris. They attended with various powers. Thirteen of the delegations possessed full authority to negotiate, conclude, and sign a general postal convention within the limit of their instructions and subject to ratifications by their governments. Five submitted letters of credence authorizing them to represent their respective administrations but without conferring upon them the powers necessary to sign a convention. Three—Italy, Serbia, and Turkey—presented neither full powers nor letters of credence, but had had their nominations officially notified to the Swiss Federal Council through their respective governments. Because of such variations it was proposed to admit the delegates of all countries to take part in the deliberations of the Congress, and to express the wish that those not supplied with the necessary powers to sign a convention subject to ratification, would take the proper steps to obtain such powers.[2]

In accordance with custom, the chief of the Swiss delegation was elected President of the conference, but in this instance he happened to be the Chief of the Department of Swiss Posts rather than a diplomatic officer.

Unlike the diplomatic conferences previously held, a definite set of rules of procedure was presented to

[2] John F. Sly, The Genesis of the Universal Postal Union (International Conciliation, No. 233, October, 1927), p. 403.

the Berne conference and duly adopted. These rules contained several important innovations. In the first place, they recognized that the postal administrations of non-sovereign states might be represented at the conference in the same manner as sovereign states. Thus Article I states that "Each State *or Administration* may be represented by one or several delegates," and Article V provides that "In voting, each contracting State *and Administration* has the right to one vote and one alone."[3] This was quite contrary to the classical theory that only sovereign states had international personality and could enter into international negotiations.

In the second place, the rules provided that the decisions of the conference should be taken by voting, but did *not* state that unanimity was required. As a matter of fact, all of the voting at the conference up to the final acceptance of the draft convention was done by majority rule, and it does not seem to have occurred to the delegates that it should have been otherwise. Nor was there any need for the unanimity rule, since Article 10 of the rules of procedure provided that the adoption of the convention embodying the results of the deliberations of the conference was "dependent upon the approbation of the contracting Governments, indicated through the ordinary channels."[4]

[3] Sly, op. cit., 404.

[4] Ibid., p. 405, citing *Documents du Congrès Postal International, réuni a Berne due 15 Septembre au 9 Octobre 1874*, pp. 15-16.

A General Committee consisting of the representatives of eleven states was formed for the purpose of examining and reporting on specific questions and also to act as a drafting committee. In accordance with the rules of procedure, the other members of the conference had the privilege of attending its meetings, "without, however, taking part in the discussions."[5] This was a vastly more business-like arrangement than that adopted later on at the Hague Conferences and other political conferences whereby every delegation was allowed to be represented upon every committee, with the result that the committees were entirely too cumbersome in size for effective work.

The basis of discussion, as provided by the rules of procedure, was a project for a general postal union that had been prepared by the Administration of German Posts and previously communicated to the states invited to participate in the conference. This project was discussed in plenary sessions of the conference, and only those points upon which there was a pronounced difference of views were referred to the General Committee for examination and recommendation. After the various articles were adopted in plenary meeting they were referred to the General Committee for "coordination and rewording."[6] Thereafter the completed draft was again submitted to the full conference for final adoption. The results

[5] Article 8, ibid., p. 405.
[6] Ibid., p. 409.

of the conference were embodied in a multilateral convention and a règlement. The former established a "General Postal Union," prescribed its organs, and set forth the general principles to be applied in the international exchange of postal matter. The latter dealt with the details of organization and administration.

The Union established by the convention was intended to be a permanent one, and it was realized by the delegates that some provision would have to be made for amending and adding to the convention to make it conform to changing conditions. Article XVIII accordingly provided as follows:

> Every three years at least, a Congress of plenipotentiaries of the countries participating in the treaty shall be held with a view of perfecting the system of the Union, of introducing into it improvements found necessary, and of discussing common affairs.
>
> Each country has one vote.
>
> Each country may be represented either by one or several delegates, or be the delegation of another country.
>
> Nevertheless, it is understood that the delegate or delegates of one country can be charged with the representation of two countries only, including the one they represent.
>
> The next meeting shall take place at Paris, in 1877.
>
> Nevertheless, the meeting may be held sooner, if a request to that effect be made by one-third at least of the members of the Union.[7]

This provision for future conferences meeting at fixed periods represented a great advance in the

[7] Ibid., p. 422.

technique of international collective action over the practice of holding single *ad hoc* conferences to deal with problems after they had arisen, for by that provision the members of the Union became, so far as postal matters were concerned, a single, organized association capable of acting as a whole. The signatories were effectively bound to consider henceforth all matters of postal exchange as international questions to be regulated by the collective action of the whole community of states embraced in the Union, rather than by the independent action of separate states. In other words, it created a permanent legislative organ empowered to deal with the subject of international posts as a whole.

Since the conference of 1874, the Postal Union has become universal in extent, and is an indispensable organ of international government operating for the direct benefit of the private citizen. It has held frequent congresses or conferences, at which the original convention has been amended or rewritten, often by a majority vote. On occasion, these changes have been vigorously opposed by individual states, but the alternative of accepting them in the end or withdrawing from the Union has proved an effective sanction for majority rule. Thus Woolf cites the following instance:

> At one Congress the majority of the delegates were in favor of a change in a foreign postage rate. The French Government was strongly opposed to any change, and the French delegate announced that he would not only vote against it, but refuse to accept it. The proposed change obtained a

majority of the votes; the new Convention was signed by the French delegate and ratified by his Government; and the rate was changed. Thus, the French Government was faced by the alternative of withdrawing from the Union and asserting the independence of its own Administration, or of surrendering its independence for the advantages of International Government. It did not hesitate twenty-four hours to choose the latter. In fact, so far has the surrender of independence to International Government gone in the Union, that the theoretical right of the State to refuse ratification to the Convention and Règlement as voted at a Congress in practice hardly exists. The Administrations, adhering to the Union, never wait for formal ratification before putting the new regulations into operation, and the decisions of a Postal Congress are acted upon whether they are ratified or not.[8]

In theory, the decisions of these Congresses are taken *ad referendum,* subject to the ratification of each country, but in practice this is not observed, since by custom the decisions are put in effect immediately, without waiting for ratification. "A country may have ratified the Act of a Congress or not, but on the day fixed must be prepared to execute it or withdraw from the Union. Even if a State has not ratified the Convention or one or other of the articles of the Règlement, it is nevertheless considered as forming a part of the Union, and in reality it applies the decisions of the Congress concerning the said Convention or Règlement as if it had done so."[9] "Under this postal convention," remarks

[8] Leonard S. Woolf, International Government, 195.

[9] Report of Director of the International Bureau of the Universal Postal Union, August 31, 1926, summarized in International Conciliation, Oct., 1927, No. 233, pp. 437-438.

Raymond Leslie Buell, " virtually every state has surrendered its ' sovereignty ' over foreign postage rates; but nobody has worried about it, simply because this method of cooperation has advanced the interests of every country in the world." [10]

CONFERENCES ON COMMUNICATION AND TRANSIT

As an example of the type of collective action in non-political matters that has become most prevalent since the war, one could hardly do better than to consider the conferences that have been held to deal with communications and transit. This is for two reasons, first, because they illustrate the rôle the League of Nations has come to play in these activities, and second, because more attention has been paid to matters of method and procedure in these conferences than in conferences on any other subject.

One of the most pressing problems remaining after the termination of the war was the restoration of the means of communication and transit between nations. To this end the French Government on August 31, 1920, without waiting for the organization of the League, invited the Powers represented on the Commission of Ports, Waterways and Railways at the Peace Conference, and certain other states, to appoint representatives to sit on a commission to study the manner in which the League might carry out the duties entrusted to it by paragraph (e) of Article 23 of the Covenant of the League and by

[10] Raymond L. Buell, International Relations, 138.

certain articles of the Treaties of Peace. As a result of this invitation, the " Commission of Enquiry on Freedom of Communications and Transit " was formed in Paris, consisting of the representatives of nineteen states (all European with the exception of China, Japan and Uruguay).

On February 13, 1920, the Council of the League of Nations adopted a resolution inviting this commission, first, to submit proposals for the formation of a permanent international organization for communications and transit; second, to prepare drafts of general international conventions with regard to transit, waterways, ports and railways; and third, to advise the Council generally on pertinent questions submitted to it. This invitation was accepted by the Commission, which thereupon changed its name to the " Provisional Committee on Communications and Transit of the League of Nations " and set to work upon a scheme of organization. On March 17, 1920, the Committee submitted to the Council a report on its findings and recommendations for the establishment of a permanent transit organization as a part of the League of Nations.

It will be recalled that while paragraph (e) of Article 23 of the Covenant bound the members of the League to " make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League," it did not specify the manner in which this should be accomplished; that is, whether

through the regular deliberative and administrative organs of the League or by collective action of the member states acting as a separate body. The Provisional Committee considered both alternatives, and rejected the former because of the unanimity requirement in the procedure of the Assembly and because of its essentially political character. Instead, the Committee recommended that " a General Conference of Communications and Transit, analogous, with certain reservations, to the Labour Conference, would serve the purpose as being a flexible organisation, eminently susceptible of modification and adaptable to its purpose, always ready, and continuously suitable for the accurate and efficient work involved by the immediate carrying out of these international arrangements." [11]

In addition, the Committee recommended the establishment of a " more restricted and manageable body, more closely associated with the daily life, as it were, of the League of Nations." [12] This body was to be a permanent committee with deliberative and executive powers, to act in the interim between the meetings of the General Conference and also as an instrument of conciliation between the members of the League in disputes on transit questions. It is of special interest to note that, according to the proposed plan, the members of this committee " would be considered not as representing the Members of the

[11] Records of the First Assembly, Meetings of First Committee, 189.
[12] Ibid., p. 190.

League by whom they were nominated, but as acting in the name of the Members of the League of Nations regarded collectively.''.

The Council of the League approved of the conclusions of the Committee of Enquiry, and on May 19, 1920, adopted a resolution, subject to approval by the Assembly, providing for the convening of a '' General Conference on Freedom of Communications and Transit,'' [13] for the purpose of acting upon the Committee's recommendations.

On the same day, the Council adopted an important general resolution defining the relations that were to exist between the various '' technical '' organizations then under consideration and the Council and Assembly of the League.[14] This resolution grew out of a general feeling that some coordination of the work of the organizations engaged in the regulation of various international activities was essential in order to prevent overlapping and conflicts of jurisdiction between them.[15] At the same time the resolu-

[13] Ibid., p. 192.

[14] This resolution was subsequently approved by the Assembly on December 9, 1920. See Records, First Assembly, Plenary Sessions, 352-355.

[15] The advantages to be derived from such coordination were well expressed at the Barcelona Conference by M. Van Eysinga, the Dutch jurist, who stated in part as follows:

In regard to technical matters, one may take note of the salutary control which the League of Nations can exercise in order to eliminate conflicts of competence between the various organizations similar to our own. Before 1914, the constantly increasing number of international unions and of collective conventions often gave rise to the possibility of encroachment by one of these unions or conventions

tion raised a delicate question of authority. So long as the organizations referred to were established by the League itself, acting within its own powers, it would seem that the Council or Assembly might fix such conditions of control as were deemed advisable or necessary. But where such organizations were the product of a separate international agreement of the powers acting as independent nations and not of the Council or Assembly, the right of control over them obviously depended upon the acceptance of such control by the interested states. Yet two days prior to the passage of this resolution, the Council and Assembly had accepted the view that these organizations could only be established by independent agreement of the separate states. Thus, in the report on the relations between the Council and Assembly

upon the territory of another. The classic example of these encroachments has been, if I do not err, the Conference for the protection of human lives at sea, which has encroached upon the terrain of three other unions: that of the codification of maritime law, that of wireless telegraphy and that of maritime police.

Along side of the ancient problem of the conflict of laws, the world was thus faced with the new problem of the conflict of international unions, and this problem threatened to become the more dangerous because an organ to resolve these conflicts was absolutely lacking. Well, this organization now exists. The resolution of the Assembly of December 8th last on the relations of the technical organizations with the Council and the Assembly, while leaving to these organizations the necessary autonomy—which is very desirable—gives to the Council and Assembly a right of control over the work of these organizations, a right which, in the future, can prevent the dangerous conflicts of which I have just spoken to you. That is a signal advantage for which we are indebted to the existence of the League of Nations alone. (*Conférence de Barcelone, Comptes Rendus et Textes relatifs au Règlement d'Organisation, etc.*, 5.)

adopted by the latter body on December 7, 1920, there appears the following statement:

VIII. It remains to solve a very important question: What is the nature of the executive effect of decisions of the Council and the Assembly? In our opinion, the Assembly and the Council should be considered to have complete authority in all matters which the Covenant or the Treaties have committed to them for decision. There are, however, matters referred to in the Covenant *which are not within the competence of these organs but require the concurrence and action of the Governments concerned in the form of international conventions, such as the serious questions contemplated by Article 23, paragraphs a, b, e, f.* In these matters one must not forget that the responsibility of the Governments represented at the Assembly, which is external to the Assembly, cannot be engaged. The action of the Assembly should accordingly take the form of a recommendation or invitation leading up to agreement between the Governments.[16]

In other words, the Council and Assembly were of the opinion that under the Covenant they did not have the power to create permanent international organizations or systems of conferences to deal with the matters specified in paragraphs (a), (b), (e), and (f) of Article 23, but could only *recommend* to the powers that such action be taken by them, acting in their capacity as independent states. This being the case, the Council and Assembly would seem to be equally without the power to specify in advance the form which such organizations should take or to fix the amount of control to be exercised over them.

[16] Records of Plenary Meetings of First Assembly, 319-320; (Italics added).

The Provisional Committee's plan of organization for communications and transit, as approved by the Council, was in due course submitted to the First Assembly in the form of a draft resolution empowering the Council to convene a conference of the powers for the purpose of establishing the organization as outlined. This brought on a serious dispute over the power of the League even to *invite* the member states to form an organization that would be permanent. Mr. Rowell, of the Canadian delegation, who looked with some apprehension upon the growing number of international organizations, insisted that the permanence of the proposed association must be left entirely to the states themselves to decide in conference.[17] He seems to have overlooked the fact that the Provisional Committee's plan of organization was merely in the form of a project and could be modified at the proposed conference in any way that the powers saw fit. Nevertheless, his view finally prevailed, and the Assembly, before adopting the resolution before it, carefully struck therefrom all reference to the provision suggested by the Provisional Committee that there be a system of periodic conferences, and that the advisory committee should be permanent.[18]

[17] Ibid., p. 326.

[18] Thus the provision in Section II of the resolution that "The Conference shall likewise be invited to organize a Standing Communications Committee" (un comité permanent des communications) was altered to read that "The Conference shall likewise be invited to organize an Advisory and Technical Committee." Similarly, the provision in the same section that "The Committee will plan the

But when the conference met at Barcelona on March 10, 1921, to consider the projected scheme of organization, there was great confusion in the minds of the delegates, first, as to the relation of the conference to the League, and second, as to just what the Assembly had decided regarding the question of permanence of the proposed organization.

In the first place, the majority of the delegates seem to have been under the impression that the conference itself was a mere organ of the League, rather than of the separate states acting collectively, and that it could not substantially alter the Provisional Committee's project as approved by the Council and Assembly. Thus, we find the President of the Conference repeatedly making such statements as the following: "It is Geneva which has given us our chart and we are obliged to follow it."[19] This was hardly a tenable position since the conference was in fact a meeting of representatives of independent states and possessed full liberty of action to accept or reject the League's recommendations.

Likewise, in regard to the question of the duration of the proposed organization, the impression was general among the delegates that the Assembly had definitely decided that it should *not* be permanent,

meetings of the Conference" was changed to the expression "The Committee may arrange for any future conference." For original text see Records of the First Assembly, Plenary Meetings, 342-346, and for amended text see ibid., pp. 373-377.

[19] *Conférence de Barcelone, Comptes Rendus, etc., 25.* This opinion brought a protest from some of the delegates (see, for example, ibid., pp. 30-31), but appears to have been acquiesced in by the majority.

and the Conference, being a creation of the League, was without power to change that decision. Thus, Sir Hubert Llewellyn Smith, the chief British delegate, stated as follows:

> It will be recalled that at the Assembly of the League certain amendments were introduced in the draft resolution by which the present Conference was constituted, stipulating clearly that the League of Nations was not bound to anything other than this single Conference of Barcelona. The opinion was that there could be other conferences in the future and even that there probably would be, *if the Assembly or the Council judged it necessary and desirable,* but it was clearly said that nothing, in the technical organization, should obligate the League of Nations to a series of conferences. . . . . My government can not be party to an arrangement contrary to an express decision of the Assembly, which is that we ought not to create a permanent organization depending, for its continuous functioning, on a future conference.[20]

Of course, if the intention had been to establish the proposed Communications and Transit Organization as an integral part of the League machinery, an expression of opinion by the League that the proposed organization should not be permanent might properly have been considered a limitation upon the action of the conference. But this was, in fact, an erroneous interpretation of what the Assembly had decided. That body had left it entirely in the hands of the nations in conference to decide whether the organiza-

[20] Ibid., pp. 14-15; (Italics added).

tion should be permanent or not.[21] But the Conference, acting under this erroneous impression, avoided all discussion of the advisability of creating a permanent organization and cast the burden of the decision back upon the Assembly and Council.

This view occasioned a great deal of trouble in agreeing upon the statute of organization. Obviously, from the very nature of its work, the Advisory and Technical Commission had to be a permanent body. That was tacitly admitted by everybody, although the word " permanent " had been deleted from the title of the Commission. But the members of this Commission had to be elected by a general

[21] The actual words of Mr. Rowell, who was chiefly responsible for the decision of the Assembly, were as follows:

In the first place this report deals with the subject matter covered by Article 23 of the Covenant. As was pointed out in the report submitted to the Assembly by Committee No. 1 on the Relations of the Council to the Assembly, the matters dealt with in Article 23 of the Covenant stand in quite a different position from matters dealt with in the other Articles of the Covenant. Under Article 23 *neither the Council nor the Assembly has the right to settle finally those matters.* The Article is clear and specific, it was prepared with great care at the time, and the Governments concerned reserved to themselves the right to deal with matters under Article 23 according to International Conventions and Treaties.

The first Clause of Article 23 is as follows:

Subject to and in accordance with the provisions of International Conventions existing or hereafter to be agreed upon, the Members of the League . . . .

My first submission is that the jurisdiction of the Council and the Assembly to deal with matters only arises when Conventions are actually entered into under the terms of Article 23, and, therefore, any action we now take must be of the character mentioned in the report of Committee No. 1, namely, simply by way of recommendation to the Governments concerned. (Records of the First Assembly, Plenary Meetings, 326.)

conference of the states members of the organization, and if the Barcelona Conference were not permitted to determine the intervals at which succeeding general conferences would be held, it was impossible to fix a definite term of office for the members of the Advisory and Technical Commission. All were agreed, however, that the term of office of the members of the Commission could not be left indefinite, particularly as only a third of the members of the organization could be represented on the Commission at one time. After a long discussion it was finally agreed that the term of office of members of the Commission should be fixed at four years, and that if another general conference were not held before the end of that period, the Assembly would be requested to decide upon another method of electing the new members of the Commission.

But since the Barcelona Conference was held, the doubts about the advisability of making the communications and transit organization a permanent body seem to have vanished. Experience has amply demonstrated the need of periodic general conferences, and at the third General Conference of the Communications and Transit Organization the rules were amended to provide that "ordinary general conferences on communications and transit shall meet every four years." [22]

The right of control over the acts of the Organization, as specified in the resolution of the Council ap-

[22] Article 4, Rules of Organization as revised by the Third General Conference.

proved by the Assembly on December 9, 1920, is specifically recognized in the rules of organization. The extent of this control is expressed in the following provisions of the resolution of the Council:

(a) *The interior working of the various organisations should be independent.*

They will prepare their own agenda, and communicate it to the Council of the League before discussion thereon takes place.

(b) *Their relations with the Members of the League should be under control.*

Before any communication of the results or proposals of the technical organisations is made to the Members, and before any action concerning a Member is taken, the Council of the League must be immediately informed in order that they may be able to exercise their power of control if necessary.

In this case, the Council may decide that the communication or action in question shall be postponed and request the technical organisation concerned either to withdraw the question from its agenda or to submit it to further consideration.

The technical organisation may, however, request that the decision taken by the Council shall be discussed at the next meeting of the Assembly.

Of course the veto power provided for in this resolution is a very slight one, since it can only be exercised by a *unanimous* vote of the Council. So long as a single member of the Council approves of the action taken by a technical organization, such action cannot be changed or vetoed by the Council. The advantages to be gained by some coordination of the administration of the various " non-political " organizations are readily apparent, and the amount

of control by the Council provided for in the above resolution was conceived to be the minimum whereby such coordination could be secured. Aside from this slight control over the channel of communication between the technical organizations and the members of the League, these organizations retain their complete independence of action.

Form of Action

We have seen above that the Barcelona Conference felt itself without power to change what it conceived to have been the decision of the Assembly of the League on the question of the duration of the communications and transit organization. But it did make one change in the scheme of organization set forth in the Assembly's resolution which was, in reality, quite as far-reaching. This related to the question of whether the measures drawn up by the General Conference should take the form of *draft* conventions or *definitive* conventions.

The resolution of the Council and Assembly under which the Conference had been convened specified that the Conference would be invited to:

(1) Draw . . . . the measures, etc.

(2) Determine under the same conditions whether the measures which it elaborates shall take the form of draft conventions to be ratified by the Members of the League, or of "recommendations" to the various Governments, or of draft resolutions, to be adopted by the Assembly of the League.[23]

[23] Records of First Assembly, Plenary Meetings, 375.

In the report of the Provisional Committee presented to the Conference, it was explained that the procedure recommended above was modeled after that adopted in the Treaty of Versailles for the International Labor Organization. This procedure was an important innovation in international practice and deserves some special attention.

According to Article 405 of the Treaty of Versailles, when a general conference of the International Labor Organization "has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the Members." In either case a majority of two-thirds of the votes cast by the delegates present is sufficient for adoption. Thereafter, within one year from the closing of the session of the Conference, each member country is obliged to "bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action." This applies to every member state, *whether its government delegates have voted in favor of or against* the recommendation or draft convention.

In other words, the Treaty of Versailles recognizes that the subject-matter of international labor con-

ventions falls properly within the competence of the legislative branches of the various governments, rather than of the "political" branch entrusted with the conduct of foreign relations; and it adopts a scheme for bringing draft conventions directly to the legislative organs of national governments for action, regardless of possible opposition on the part of the political organs. This is a recognition that the claim of political "heads of states" to sole and complete representation of the state in international intercourse is in reality a fiction that need not be observed in non-political matters. And as a corollary of this proposition the customary procedure of signing conventions before they are submitted for ratification has been abolished. For otherwise the anomalous situation might frequently arise in which a government delegate who had voted against a particular convention would nevertheless be under the necessity of signing that convention in order that it might be brought before the legislative authorities of his country for action.

Signature and Ratification

This elimination of the signature of international conventions seems at first sight like a radical innovation in international practice, but it is, in fact, a logical outcome of the changing character of international intercourse and the growth of popular government. When the sovereign power of nations was completely identified with the person of the ruling monarch, the ratification of treaties signed by or on

behalf of heads of states was largely a formal matter. Treaties were turned from draft proposals into definitive agreements by the act of signature. Where this act was performed by an authorized agent of a sovereign, ratification of the treaty was merely a formal registering of assent by the principal to the act of his agent. The power that authorized the signature and the power that put the treaty into effect were the same. Hence, there was little reason to suppose that ratification would not follow signature unless the agent had exceeded his authority in a particular case. The important thing was the signature rather than the ratification.

With the rise of popular government and the entrance of the people at large into the international field, all this has been changed. In most countries the act of signature of an international convention has become merely the assent of one branch of the government to a proposed agreement, and this branch does not necessarily possess the power to put the treaty into effect. Ratification more often depends upon the assent of a body that has not participated in the negotiations and is in no way bound by the action of the " government " representatives. In fact these representatives, no matter how broad may be the wording of their full powers, can no longer be said to represent the state as a whole, but only the political branch.

By habit the word " government " is still identified in international intercourse with the executive

organs of national governments that are empowered to conduct international relations. In the case of parliamentary governments, such as is found in Great Britain, this usage is not incorrect since the political head of the state, in negotiating international agreements, acts upon the advice of a ministry that is directly responsible to the legislative branch of the government. Likewise, in the case of absolute monarchies and dictatorships, there is a similar unity in the national machinery for conducting international relations. But in the case of the great majority of states having republican forms of government, there is found a definite division of powers in the negotiation of international agreements and in making these agreements effective, and in such cases the assumed identity of the " government " with the negotiating branch thereof is a mere fiction. Obviously where legislative bodies have functions to perform in their own right in the conduct of international relations they are as much a part of the " government " as is the executive branch, and in such cases the use of the word " government " as a synonym for the executive branch would not appear to be justified. Foreign office officials and diplomatic agents are naturally reluctant to admit that they no longer speak for the whole nation in all cases, and continue to act on behalf of their " governments " when they mean in fact only the political head of their governments. " Full powers " to act on behalf of the "government " in concluding international agreements are

still given by political heads of states, but it is well recognized that agents equipped with such powers cannot in fact bind their governments as a whole.

Of course in the case of an international treaty dealing with the political relations of states, the approval of the political head of the state, as evidenced by the signature of the treaty, would always be considered as an essential preliminary by the legislative branch before it would consent to the ratification of the treaty. Such matters are primarily within the scope of activity of the executive branch, and its officials are presumably competent to deal with them. The act of ratification by the legislature in this case is chiefly in the nature of a check upon the policies formulated by officials acting within the sphere of their regular duties.

But in the case of international agreements on non-political matters the situation is not quite the same. Since these deal with the transactions and interests of individuals rather than states as political units, their subject-matter falls, as a rule, outside the scope of activity of foreign office officials and within the province of legislative bodies. Here the prior approval by the foreign office or executive before the agreement can be submitted to the legislative body does not have the same force.[24]

[24] Frequently conventions on non-political subjects are not submitted to national legislative bodies for ratification because of indifference or opposition on the part of the political department. This fact recently led the Economic Committee of the League of Nations to make the following recommendation to the Council: "On this occasion the Committee recalled that, prior to the War the

In the case of the International Labor Organization, the Treaty of Versailles has, by abolishing the requirement of signature, in effect deprived the executive branch of its prior veto power over the conventions adopted by the General Conference. Furthermore, by requiring that conventions passed by a two-third majority be submitted to the appropriate ratifying organ of all governments for action, the Treaty has made possible the adoption of such conventions even against the opposition or indifference of foreign offices.

But the act of abolishing the signature of international labor conventions was such an innovation that some foreign office officials accustomed to the traditional procedure completely failed to grasp its import. Thus, in regard to the conventions adopted by the General Conference of the Labor Organization held in Washington in 1920, the French Foreign Office wrote to the Secretary General of the League of Nations as follows:

> With reference to your letter of the 27 January 1920 . . . . I have the honour to inform you that the French Govern-

act of signing a convention was regarded by the signatory as constituting a sort of moral obligation to submit it to Parliament for approval as soon as possible, and that some conventions even fixed a definite time limit for the introduction of bills of ratification. The Committee unanimously considered that this procedure might be usefully brought to the notice of Governments of States Members and that the Council might lay down, as regards the coming into force of agreements concluded under the auspices of the League, that signatories should do all in their power to submit such conventions to Parliament as early as possible." (26th Session, October 23-30, 1928, Monthly Summary of the League of Nations, November 15, 1928, p. 349.)

ment—which is, in the case of France, the competent authority referred to in Article 405, paragraph 5, of the Treaty of Versailles—has examined the six Draft Conventions adopted by the International Labour Conference at its Washington meeting, namely: . . . .

Following upon this examination, the Government of the Republic has approved these Draft Conventions.

Consequently, I have the honour to inform you that the French Government is ready to proceed to the signature of these documents at the place and on the date that you may indicate.

I should be obliged if you would inform the several States Members of the International Labour Organisation of the contents of this communication.

As soon as these Conventions shall have been signed by the States represented at the Washington Conference, or at least by one amongst them and by France, the Government of the Republic will submit them without delay to its Legislative Chambers in order that it may be enabled to follow the necessary subsequent procedure as regards the deposit with you of the ratifications referred to in Article 405.[25]

This letter was transmitted to the Director of the International Office, and the latter, in a lengthy reply (under date of October 4, 1920) pointed out that the French Foreign Office had completely misunderstood the procedure outlined in the Labor Section of the Treaty of Versailles. He observed that if the French Government really were "the competent authority" in the meaning of Article 405 of the Treaty (which it was not) then it would be under obligation to deposit formal ratifications of the con-

[25] Official Bulletin, International Labor Office, II, 7, No. 10.

ventions " without any further measures being necessary." But the " consent of the competent authority " mentioned in Article 405 was " the consent of the authority competent to make the modifications in the national law in order to bring the national legislation into conformity with the Draft Convention," this is, the legislative authority. This consent could be obtained in various ways, but the manner in which it was done was a question purely of domestic law. Insistence upon having the conventions in the form of treaties signed by other governments before submitting them to the French legislative authority created the very difficulties that the new procedure was designed to avoid.

Suppose (said the Director) the French Government delegates to have voted, at a meeting of the International Labour Conference, against a Draft Convention which nevertheless obtained a two-thirds majority in its favour. By the terms of the Treaty the French Government will be obliged to submit the Draft Convention to the competent authority, that is to say, to Parliament.

Then, in order to fulfil the traditional procedure which it invoked and which it wishes to follow, the French Government will be obliged to sign with another State a formal Treaty, accepted by its plenipotentiaries,—that is by itself—and yet contradictory to the attitude of its delegates. It will be constrained, finally, to oppose in Parliament the Treaty thus signed.

There is no necessity to enlarge upon the curious position which would thus ensue. It was precisely in order to avoid such situations that the negotiators of the Peace Treaty wisely devised a new form of procedure.[26]

[26] Ibid., p. 12.

It was the intention of the Provisional Committee on Communications and Transit that the above procedure adopted for the Internal Labor Organization should be followed by the projected Communications and Transit Organization. To this end it was provided in the proposed rules of organization that the General Conference should decide, in regard to each proposal accepted by it, whether it was to take the form of a " recommendation," a " draft international convention to be ratified by the Members of the League," or a " draft resolution to be submitted to the Assembly of the League for adoption." In all three cases, a two-thirds majority was sufficient for final adoption by the Conference. The purpose of using the term " draft convention " for ratification by the Members was to do away with the signature requirement, as in the case of convention adopted by the General Conferences of the Labor Organization.

While neither the Council nor the Assembly of the League raised any objection to this part of the Provisional Committee's project, it met with considerable opposition at the Barcelona Conference and finally had to be abandoned. This opposition took the following three grounds:

1. That the proposed procedure was contrary to traditional practice. Thus one of the British delegates (Sir Cecil Hurst, Legal Adviser to the Foreign Office) made the following assertion:

> Ratification is a diplomatic term having a special signification and it is a little contradictory to say that such a document

can be ratified when, in fact, this document is only a draft convention and only becomes a convention from the moment when it has been signed by plenipotentiaries in the normal way. In fact, ratification is only the assent by the sovereign authority to the action of the plenipotentiary who signs the convention.[27]

In other words, it is the signature that turns a draft convention into a real convention, and only a real convention can be ratified. There is, in fact, no reason for the statement that a convention must be signed before it can be ratified, other than the fact that up to the time of the formation of the International Labor Organization it had always been done that way. It is quite as possible for a sovereign to consent to be bound by a " draft " convention as by one signed by a plenipotentiary. So far as signature is merely a matter of form, it can be retained or abolished at the will of the parties to an international agreement. Sir Cecil Hurst's objection is valid only on the assumption that the act of signature itself gives some binding force to the convention. It is now universally provided that conventions have no binding force until ratified, and such ratification is usually in the hands of a legislative body free of control from the power that authorizes signature. Hence, it would seem to make little difference whether an agreement is called a " convention " or a " draft convention " before ratification, or whether the formality of signature is observed or not, unless such signature actually operates to give some force to the

[27] *Comptes Rendus etc.*, 28.

agreement that it did not previously have. In spite of insistence upon the necessity of signature of conventions, it was not the intention of the delegates at the Barcelona Conference that such signature should carry with it any binding force. This was made clear by one of the delegates in the following words:

> Take note, moreover, that ratification is not a simple formality; the governments remain entirely free in their decisions. In these conditions, the right which we have to sign true conventions in no way binds the governments which we represent.[28]

2. The second ground of objection was that if the Conference could only draw up "draft" conventions and not "real" conventions it lost a good deal of its dignity and importance and sank to the level of a mere advisory commission. Thus the same delegate who made the above sound observation regarding ratification insisted with a certain inconsistency that the General Conference should have the power to conclude "real conventions" (*véritables conventions*). Those delegates who were armed with full powers argued that, since the General Conference was to be made up of plenipotentiaries of sovereign states, it must have the power to draw up "definitive" instruments. And when, later on, the Belgian representative happened to remark in plenary meeting that "we are technicians, experts," the minutes record that this was received with loud protests, so that he was compelled to add, "I beg your pardon,

[28] Ibid., p. 31.

we are *experts plénipotentiaires.*'' [29] No one seems to have grasped the fact that the term '' draft '' convention in reality had nothing to do with the finality of the convention but merely with the formality of signature.

3. The third ground of objection was that the term '' draft '' convention inevitably suggested the idea of an incompleted instrument subject to further modification, rather than a definitive agreement to be accepted or rejected *in toto.* Thus Sir Cecil Hurst suggested that if the results of the deliberations of the conference were submitted to the various governments in the form of '' draft '' conventions there would always exist the possibility that proposals would be made for introducing modifications or amendments. '' In this case,'' he said, '' all the work of the Conference would be reopened.'' [30] This objection was not without weight; but if the danger of such a conception really were great, it might have been avoided either by the use of some other word than '' draft '' or by a precise definition of the word in the rules of organization.

The Conference finally decided to eliminate the word '' draft '' from the rules of organization, and thus to restore the necessity of signature of conventions before they could be submitted to the various legislative bodies for proper action. It retained the

[29] Ibid., p. 83.
[30] Ibid., p. 29.

rule of two-thirds majority for the final adoption of a convention, but did not add that conventions so adopted had to be submitted to the competent local authorities of all member states as in the case of the Labor Organization. Hence, except for the two-thirds rule, it reverted to the traditional practice. In order to do this it was necessary to go beyond the terms of the resolution of the Council convening the Conference, which had only mentioned "draft conventions" and "draft resolutions." As pointed out above in connection with the question of permanence of the organization, the Conference had been of the opinion that it did not have authority to alter the clear terms of the resolution. In this case there was a much stronger sentiment in favor of the change, and the Conference seemed to show no hesitation in making it, even though it involved a very important alteration in the procedure of the proposed organization.

The project of the Provisional Committee put into separate instruments the scheme of organization of the General Conference and the Advisory and Technical Committee, and the rules of procedure of the conferences. The former was in reality the constitution of the Communications and Transit Organization, and it was provided that this could only be revised by a two-third majority. In the case of the rules of procedure, on the other hand, only a mere majority was required for alteration.

The Barcelona Plan of Election

In the matter of electing the members of the Advisory and Technical Committee, a novel method of assuring diverse regional representation was adopted, which has since become known as the "Barcelona plan." According to the draft rules of organization, the membership of this committee was limited to a third of the membership of the League, or sixteen members. This included four members chosen by states who were permanent members of the Council of the League, and the remainder were appointed by those member states who were chosen by the Conference as being "the most generally concerned in questions of communications and transit." In the election of these remaining states, permission was given for "grouping" in the following manner:

> To facilitate the representation on the Committee of particular geographical areas or groups, and in order to make the best use of experience from all parts of the world, particular Representatives at the Conference may declare, prior to the election and with the approval of the Conference, that the Members of the League whom they represent propose one of their number for election by the Conference to the exclusion of the others. In that case all votes in favour of any of the Members of the League taking part in such a declaration shall be counted in favour of the Member so proposed.[31]

For example, if the Balkan States desired to make sure of having one of their number represented on the Committee, they could elect to pool all the votes they

[31] Rules for the Organization of General Conferences, etc., Art. 5.

received in favor of any one of them—say, Roumania. Then any votes cast for any Balkan state would be counted as a vote for Roumania. This scheme has worked well in practice and was retained with slight modification in the revised rules of organization adopted at the third General Conference held in 1927.

While the individual members of the Advisory and Technical Committee were not appointed by the Conference but by the states selected for that purpose, nevertheless it was the intention that these members should act for the whole organization rather than merely as representatives of their own states. Thus in the report accompanying the draft scheme of organization it was stated as follows:

> The Committee as a whole represents the Conference alone (i. e., the Members of the League of Nations regarded collectively), and not those particular Powers which, in virtue of the act constituting the Committee, or of the choice of the Conference, have received a mandate to participate in the former body. In any event the members of the Committee should not be bound by instructions from the Governments by which they are nominated; they receive a mandate for a certain period of time; they are not liable to be recalled. . . . . The members of the Committee should be considered as individuals appointed by the Members of the League of Nations to lend their services to the League.[32]

[32] Preparatory Documents, 22-23. See also the statement of the Secretary-General of the Third General Conference: "The advisory and Technical Committee, however, was of an international character and was not concerned with the private interests of States." (3rd General Conference, Records and Texts, etc., IV, 10.)

The idea here expressed was not new—in fact it is an essential condition for the successful working of any international organization where representatives of less than the total membership are empowered to act for the organization as a whole. If, for example, the sixteen members of the Advisory and Technical Committee of the Communications and Transit Organization should act only on instructions from and in the separate interest of their own governments, it might create an intolerable situation for the other members of the organization. Yet it is very difficult to reconcile this idea with traditional diplomatic practice, which was founded on the conception that international intercourse could be conducted only through instructed agents acting solely on behalf of their respective states.[33]

[33] Thus, even in regard to the Council of the League of Nations, it has been repeatedly asserted that the members cannot possibly be considered as acting in any other capacity than as instructed representatives of their own governments. (See, for instance, Records of First Assembly Committees, I, 11, et seq.) Yet if this view were carried to its logical conclusion the Council would inevitably act as an oligarchy of a few powers rather than a representative body dealing with the interests of the whole League of Nations. As a matter of fact, this idea is not carried out in practice. For instance, when the Dutch member of the Council is designated as *rapporteur* in the consideration of the Polish-Lithuanean dispute, he does not act as an agent of the Netherlands Government nor under its instructions, nor does he concern himself with the possible interests of his own government in the dispute. He acts as a member of the Council, which in turn is acting on behalf of the whole League. Even in the matter of form, it should be noted that while the notices for the convening of the Assembly of the League are sent to the *governments* of the member states, the notices for the meetings of the Council are sent to the *individuals themselves,* rather than their governments.

The official instruments approved by the Barcelona Conference consisted of the following:

1. Rules for the Organisation of General Conferences on Communications and Transit, and of the Advisory and Technical Committee.
2. Rules of Procedure for General Conferences on Communications and Transit.
3. Convention and Statute on Freedom of Transit.
4. Convention and Statute on the Régime of Navigable Waterways of international concern.
5. Additional Protocol to the Convention on the Régime of Navigable Waterways of international concern.
6. Declaration recognizing the right to a flag of States having no sea-coast.
7. Recommendations relative to the International Régime of Railways.
8. Recommendations relative to Ports subject to an international régime.
9. Final act.

It is of special interest to note that, of the above nine instruments approved by the conference, only the 3rd, 4th, and 5th were put in the form of international agreements for ratification by the various states. The other instruments were adopted as official acts *of the conference* as distinguished from acts of the separate states represented at the conference. This was true even of the rules of organization of General Conferences and of the permanent Advisory and Technical Committee, which in reality form the constitution of the Communications and Transit Organization. The fact that this important international organization rests upon enactments of a con-

ference *qua* conference [34] and not upon an international treaty ratified by the separate states is a significant indication of the present tendency to look upon general conferences in non-political subjects as legislative bodies rather than as collections of negotiators representing independent states. The adoption of these constitutional documents as conference enactments rather than as international conventions does not seem to have deprived them of force in actual practice, and has provided the additional advantage that they may be amended or supplemented at subsequent general conferences by less than a unanimous vote and without invoking the cumbersome process of ratification by the separate members. It is another striking instance in which the practical needs of modern international intercourse have prevailed over the dogmatic observance of traditional practice.

In regard to the two conventions adopted at the Barcelona Conference, it should be noted that these contain only the formal parts of the agreements and that the substantive rules and regulations agreed upon were put into an appended document called a "statute." [35] The statute was not itself signed or

[34] Subject, of course, to the control reserved by the League of Nations.

[35] This use of the word "statute" was apparently invented at the Barcelona Conference. Theretofore the word "règlement" had been used in similar situations, but it was thought that if used in the present instance, it would cause confusion with the "règlement" for the organization of the general conference and of the Advisory and Technical Committee. See Verbatim Reports, etc., relating to the Convention of Freedom of Transit, English text, 258-259.

ratified but was incorporated by reference into the convention. This was in accord with certain precedents (notably the Hague Conventions), but the real reason for adopting it, as explained by Sir Cecil Hurst of the British Delegation, was to avoid difficulties of drafting, arising out of the fact that the Dominions and India had become full members of the League of Nations while remaining parts of the British Empire.[36] Because of this fact, it was necessary to consider the Dominions as separate states so far as the technical articles were concerned, but, being parts of the British Empire, the term " High Contracting Parties " as used in the formal parts of the convention was not properly applicable to them. This difficulty was avoided by the expedient of putting the formal articles and substantive rules in separate instruments and having only the first of these adopted in the form of an international treaty.

In accordance with the procedure followed at the Hague Conferences, a " Final Act " was adopted in addition to the various conventions and regulations. Although this act was signed by all of the delegates, it was not in the form of a convention, nor was it intended for ratification (that is, it was the official act of the conference as such rather than of the various states represented at the conference). It summarized the authority under which the conference met, set forth a list of the delegates and of the instruments adopted at the conference, as well as the text of vari-

[36] Ibid., p. 218.

ous recommendations and declarations adopted by the conference but not incorporated in the instruments to be signed and ratified. Many of these declarations related to the interpretation of various sections of the conventions as agreed to by the conference.

Two other general conferences of the Communications and Transit Organization have been held since the Barcelona Conference. At the last of these, held at Geneva from August 23 to September 2, 1927, it was decided to reenact the rules of organization and rules of procedure adopted at Barcelona in order to incorporate in them certain changes that experience had shown to be desirable.

The most important of these changes is the definite recognition of the permanent character of the Organization, and of the necessity that the general conference should meet at fixed periods. By another change, the delegates of non-member states that may be invited by the Council of the League to be represented at general conferences are allowed full participation in such conferences on an equal plane with representatives of member states, except in matters of purely internal administration. Under the former rules, such delegates had been limited to participation in an advisory capacity.

CHAPTER X

Summary of Current Practice

The conclusion is inevitable from a study of recent conferences that it is impossible to reduce the criteria of judgment at present applied to problems of organization and procedure to one single and logically consistent body of general principles. Rather we find, in the main, two opposing systems of thought appearing side by side in the decisions of officials who control conference procedure. On the one hand there is the traditional conception of the diplomatic congress of representatives of independent states, surviving from the time when international intercourse was chiefly confined to the relations of states as political units; on the other hand, there is the rapidly growing tendency to look upon international conferences as parliamentary assemblies, organized along the general lines of legislative bodies. This tendency may be traced not only to the rise of popular government but also to the recognition that international relations are, to a constantly increasing extent, concerned with the activities of peoples rather than of political units or personal sovereigns. These two opposing viewpoints make their appearance at different times in the same conferences, and even, in some cases, in the same officials. This lack of consistency is to be regretted, perhaps, from the standpoint of the scholar seeking an orderly presentation

of the subject, but it must be recalled that the end of conference procedure is not consistency but the accomplishment of desired international regulation within the existing framework of established ideas and perceived social needs. There is no indication at present that national governments are disposed to modify in theory the classical doctrines of the sovereignty and independence of states, with all the implications flowing from them. Nevertheless, these doctrines are freely set aside in practice where the international protection of common interests requires a procedure more adapted to organized collective action.

Under the circumstances, it is impossible to indicate with any degree of assurance how particular problems of conference procedure will be decided in future conferences. This will depend in large part upon which of the above opposing viewpoints is held at the moment by the particular officials having the power to decide the matter.[1] This, in turn, depends upon the background and training of those officials and upon the nature and purposes of the conferences at which such problems arise. At the same time, it is possible, within the above limits, to indicate the general outlines of current practice in the main phases of conference procedure.

[1] It is of interest to note in this connection that while the League of Nations was originally conceived by its founders as a system of traditional diplomatic congresses, the rules of procedure adopted at the First Assembly bear the imprint of having been drawn up by parliamentarians rather than professional diplomatic agents.

INITIATION

In the absence of international organization or prior agreement, international conferences are held only as a result of an invitation extended by one or more governments and accepted by other governments. There is, as Professor Potter has said, "no presumption that a conference will be held at any time. . . . The burden of proof is upon any one suggesting a conference."[2] The doctrine of state independence implies that no state or group of states can summon other states to a conference. It is purely a matter of voluntary agreement among independent entities. Yet so far has the conception of mutuality of interests advanced that national governments are often compelled to participate against their inclination in conferences for the regulation of activities or situations in which, in the absence of collective agreement, they may be enjoying special advantages at the expense of other nations.[3] The feeling that matters of general interest to the international community should be dealt with on the basis of the community as a whole is now so widespread as to make it unwise to insist too dogmatically upon the absolute independence of individual governments in choosing whether to participate in collective discussions of such matters. At the same time, it is still true that

[2] Pitman B. Potter, Introduction to the Study of International Organization, 327.

[3] Note, for example, the case of Russia in regard to the Congress of Berlin, and France in regard to the Algeciras and Genoa Conferences.

individual governments opposed to collective action on a particular matter can in many cases indefinitely delay public discussion thereof or block it altogether by refusing to agree to proposals for convening a conference.

In the case of international unions and permanent organizations, it is customary to provide for the holding of conferences at stipulated intervals. The advantages of this system over the convening of single *ad hoc* conferences to deal with particular problems are too obvious to call for extended discussion. In the first place, it obviates the difficulty that might arise from the reluctance of one or two governments to agree to the discussion of problems common to a large number. Even where there is no such reluctance, a prolonged and intricate diplomatic correspondence must usually be undertaken before a proposal for holding an *ad hoc* conference can be successfully launched. After a general agreement has been reached on the holding of a conference, there remains a considerable amount of preparatory work to be done before the conference can operate efficiently. Experience has amply demonstrated that the success of international conferences is largely dependent upon the thoroughness with which this preparatory work is done, and also that it can be handled much more efficiently through the machinery of a permanent organization than by the independent action of individual governments.

It has already been observed that although the League of Nations was originally designed to deal

chiefly with political problems, it has rapidly become the natural center for initiating and carrying out projects of collective action in every field of international activity. This is due largely to the fact that the permanent machinery of the League has been found by experience to be a much more efficient medium for discovering possible bases of common agreement and working them into acceptable forms than has the ordinary diplomatic channel. Thus the Assembly provides an easy means of testing out the general opinion of the international community in regard to possible projects of coordinated action. If a particular proposal meets with the general approval of that body, the permanent administrative organs of the League can be put to work immediately to make preliminary studies and assemble the necessary material for an intelligent handling of the matter. If the subject is an intricate one, the Council may appoint a small international group of experts to draw up a draft convention for submission to the various governments for suggestions. The draft convention can then be revised in the light of these suggestions, and when the conference actually meets it has definite proposals before it that have every chance of being adopted. Prior to the establishment of the League, most of this work had to be done after conferences had assembled, with the result that delays and disagreements were to be expected.

The question has sometimes been raised as to whether nations that have agreed to the convening

of a series of periodic conferences on a particular subject are obligated to send delegates to each conference so held. The general opinion seems to be that no such obligation exists, and that a nation does not violate its agreement by refraining from participation in a particular conference. The question is largely an academic one, since nations that have agreed to the handling of a particular subject matter by collective action have every reason to participate in such action, if only for the protection of their own interests. Instances of abstention from the general conferences of international organizations are by no means unknown, but the matter is commonly looked upon as discretionary with each member state.[4]

WHO MAY TAKE PART

There has been much fruitless discussion as to whether "non-sovereign" states and dependent political entities can take part in international conferences. The ancient rule was that only fully sovereign states could have relations with each other, and hence only such states could be represented on an equal plane in an international body.[5] But although

[4] See the opinion rendered by the Commission on Standing Orders of the Washington Conference of International Labor Organization that a positive obligation rested on the member states to appoint four delegates to each conference as provided in the Treaty of Versailles. As a matter of fact, complete representation in accordance with those provisions does not appear to have been achieved at any General Conference of the International Labor Conference. See G. A. Johnston, International Social Progress, 234-236.

[5] Paul Fauchille, *Traité de Droit International Public*, I, part 3, p. 237.

this view still prevails to a large extent in conferences on political subjects, the practice is now general of admitting to other conferences political units that, although not enjoying complete independence, have autonomous powers of administration over the subject-matter of the conference within their own territories. Thus, we have seen that as far back as 1874, certain colonies of the great powers were admitted to membership in the International Postal Union, along with sovereign states. Other international organizations adopting the same practice before the war were the International Telegraph Union, the International Union of Weights and Measures, the International Union for the Publication of Customs Tariffs, the International Institute of Agriculture, the International Wireless Telegraph Union, the International Sanitary Conference.[6] The admission to the League of self-governing dominions and colonies indicates a tendency to abandon the former distinction between "sovereign" and "non-sovereign" states even in the case of political conferences.

This development is in accord with the changes that have taken place in the subject-matter of international intercourse in the last fifty years. When such intercourse was concerned only with the relations of independent political entities, obviously only independent states could expect to participate in conferences dealing with those relations. But when

[6] Denys P. Myers, "Representation in Public International Organs," American Journal of International Law (1914), VIII, 97.

the people themselves began to develop international activities on a wide scale, it was natural that the organs of local government concerned with the regulation of such activities should be looked upon as essential parts of the machinery through which international regulation of those activities might be achieved. With the rise of popular government and the granting of autonomy in local government to various dependencies, the organs of government competent to make effective the international regulation of activities of individuals no longer corresponded in fact with the organs representing sovereign states as independent political units. Hence, the practice has grown up of granting representation on international conferences to political organs actually entrusted with the local control over the activity in question, without regard to whether they have all the theoretical qualifications of a "sovereign" state or not.

Another and more practical reason for the admission of dependencies to international conferences has been the desire to remove some of the actual inequalities resulting from the application of the equality of voting rule among sovereign states in the regulation of non-political matters. Where the activity to be regulated is the activity of individuals rather than governments considered as political units, this equality of voting rule gives to the population of small states an unjustifiable advantage over the population of large states. Thus, in the matter of postal exchange, to give to Montenegro an equal

voice with the British Empire in the general conferences of the International Postal Union would in fact mean that the individual sender of correspondence in Montenegro would have several hundred times the representation accorded in the conference to a British subject. This absurd situation is to a large extent avoided by giving to the various autonomous dependencies of the great powers equal representation at international conferences dealing with subjects within their respective jurisdictions.

The eligibility of political entities to representation in international conferences is in fact purely within the discretion of the governments initiating a conference.[7] Where the object of the conference is to conclude an international convention between sovereign states, it is of course true that only sovereign states can participate in such action. But even in such cases " non-sovereign states " and even private organizations have often been invited to attend the conference in an advisory capacity.

It not infrequently happens that non-member states are invited to participate in conferences convened by international unions or permanent organizations. Such participation customarily takes two different forms, and it is important to distinguish between them. 1. Non-members may be invited to take part on an equal plane with members, in which

[7] Apart, of course, from any local constitutional limitation that would prevent a particular subdivision from participating in foreign intercourse, as exists, for instance, in the case of the various states of the United States.

case they become, in effect, members of the organization for the purpose of that particular conference and have all the rights and privileges of members. 2. They may be invited "*á titre consultatif*" (in an advisory capacity), in which case they take part in the discussions but not in the final voting.[8]

In the rules of organization drawn up at the Barcelona Conference, it was provided that:

> For the purpose of examining any specific question, the admission of Representatives of States not Members of the League may be allowed by the Conference by a two-third majority of the Representatives present of the Members of the League. In respect of such question the Representatives of such States may participate in the work of the Conference in an advisory capacity.[9]

It was also provided in Article 4 that states not members of the League which were invited by the Council of the League to send representatives to a General Conference could participate in the work of the Conference only in an advisory capacity. Apparently the Conference was under the impression that it did not have the power to accord to non-members the right to vote, as is shown by the following statement of the President:

> In regard to the presence among us of a certain number of delegates of States non-Members of the League, ... we should accord to these States all the rights which belong to delegations of States members of the League, except one that we cannot accord to them: the right to vote.[10]

[8] Regarding the practice followed in the Communications and Transit Organization, see Records, etc., 3rd Conf. IV, 40.

[9] Article 3, Official Instruments, etc., 3.

[10] *Comptes rendus etc., relatifs au Reglèment d' Organization,* 63.

But in the report of the Advisory and Technical Committee to the Third General Conference on the proposed revision of the rules, it was stated as follows:

> There has been a change in the general situation since the Barcelona Conference. In point of fact, such invitations (to non-members) have always been sent by the Council, and the representatives of the Governments in question have almost always been given the same rights at the Conference as other Government representatives. Nevertheless the representatives of the Governments of States not members of the Organization did not actually take any part in the discussion of certain internal questions concerning the Organisation, as, for example, the renewal of the Advisory and Technical Committee.[11]

Hence, in the new rules, representatives of non-member states invited by the Council were not limited to acting in an advisory capacity, but were given full rights with members, save in matters of internal organization.

There remains to be noted the very significant tendency manifested in recent years toward the representation of interests as well as governments in conferences on non-political subjects. As already pointed out, this tendency received official recognition in the charter of the International Labor Organization, which provided for the equal representation of employers and workers alongside of political governments in the general conferences of the Organization. It is also borne out in the increasingly

[11] Records, 3rd Conf., IV, 40.

important rôles assigned to such private organizations as the International Chamber of Commerce [12] and the Red Cross in public international conferences. It is likewise indicated in the general practice of appointing technical experts rather than diplomatic agents as delegates to international conferences. While these experts are named by governments, they speak in reality for the public that is directly interested in the activities forming the subject-matter of the conference. This fact has received explicit recognition in certain conferences in recent years in which a general understanding has been reached in advance that delegates shall *not* be limited by instructions from their political governments.[13] All of these developments indicate the evolution of a new type of machinery for dealing with the regulation of international activities alongside of our present political agencies.

THE INVITATION

It is sometimes asserted as a rule of law that all states interested in the subject matter of a proposed conference should be invited to attend it.[14] But in con-

[12]. This organization was, for example, officially present in an advisory capacity at the Conference on Import and Export Prohibitions and Restrictions, and its delegates actively participated in the deliberations of that conference.

[13] For example, the Economic Conference in 1927, the meetings of experts in 1925 and 1929 for consideration of the reparations problem, and the permanent commissions of the Communications and Transit Organization and the Health Organization.

[14] Fauchille, op. cit., I, part 3, p. 237; Dickinson, op. cit., 280-282.

ferences dealing with political matters this rule is evidenced much more often in the breach than in the observance, as has been pointed out above. And in non-political matters, such a rule is hardly necessary, since the successful regulation of these matters depends upon the inclusion of all states directly interested therein. In fact, states usually initiating conferences in this field have every inducement to make the membership as wide as possible. The difficulty has been, not so much in keeping states out of these conferences, as in getting them to come in.

In current practice, states initiating *ad hoc* conferences would seem to be free to invite such other states as they please, without being bound to invite all states having a possible interest in the subject-matter. The only rule in the matter that finds support in custom is that the invited states shall not impose the results of their deliberations upon other states against their will. Hence it is important that all states whose concurrent action is necessary to achieve a particular result should be given an opportunity to attend, or at least to adhere to the results.

One of the advantages of a system of periodic conferences over single conferences is that in the former case the membership is fixed and does not depend upon the arbitrary choice of any one state: an invitation to a conference in such cases is more like a formal notice of convocation than an offer to confer that has no binding force until accepted as is the case in *ad hoc* conferences.

Sometimes the invitation to a conference specifies the number of delegates each nation may send. Usually the number is the same for all invited states, regardless of size, but in some conferences (especially in peace conferences) the practice has been followed of classifying the invited states according to their relative size or influence, and allowing a different number of delegates for each group. Since each state is customarily allowed only one vote regardless of the size of its delegation (except in certain international unions), this numerical inequality in representation is not of importance in the final action taken by the conference. However, it does tend to give the states with the larger delegations a distinct tactical advantage in the course of the proceedings; for example, in allowing them a proportionately wider representation on the various committees.

THE AGENDA

The invitation to an international conference may set out the proposed agenda or program of the conference in detail, or it may merely indicate in general terms the subjects to be discussed. In political conferences, it is often the case that states cannot be induced to accept invitations unless the program is set out with precision.[15] Where this is done, it is often asserted that the Conference is

[15] See the correspondence between the German and British Governments regarding the agenda of the proposed Berlin Congress of 1884-85, referred to above, pp. 103-104.

strictly bound by the agenda and cannot go outside it to discuss other topics except upon the unanimous consent of all the members present. Thus Secretary Hughes, when presiding at the Conference on Central American Affairs in 1922-23, made the following statement:

> When nations are invited as sovereign powers to engage in a conference, of course no nation can be bound without its consent. Unanimity is a part of the consequences of the status of States in international law. They must consent. Now, it is usual, therefore, when a conference is called, for the Government calling the conference to propose the questions to be discussed, because if those invited do not want to discuss the questions, then of course they will refuse. . . . . Now, then, you can have a matter brought up in the Conference, of course, and the first point of order will be, Do you all agree that it shall be discussed? and if any power says no, that will be the end of it.[16]

But the question of whether a particular subject is within the terms of the agenda or not is for the conference itself to determine. Where there is doubt on this point it is customarily decided by a majority vote.

It goes without saying that any state attending a conference should have the right to demand that a subject explicitly set forth in the agenda accompany-

[16] Minutes, p. 80. Note that at the recent Conference of American States on Conciliation and Arbitration, at which Mr. Hughes was also present as an official delegate, the boundary dispute between Bolivia and Paraguay, which arose after the conference convened, was made the subject of discussion without waiting to obtain the unanimous consent of all the members.

ing the invitation should be considered by the conference before it adjourns.

Of course each invited power may, in accepting an invitation to attend a conference, make a reservation that it does so only on the ground that certain topics will be excluded from the discussion. This practice has, in fact, frequently been resorted to in the past. If no objection is made to such reservation, it would seem to be binding upon the conference, or at least upon those powers that had an opportunity to object and did not do so. Such a reservation once made and communicated to the inviting powers, and accepted by them, seems to become a part of the program of the conference.

In like manner, it has happened in certain instances in the past that a power accepting an invitation to a conference has reserved the right to introduce other topics not on the agenda of the conference.[17] If such a reservation is communicated to all the other powers invited, and they raise no objection, then the subject would, upon its introduction by the reserving power, become a regular part of the agenda of the conference.

The method of fixing the agenda of conferences of permanent organizations is customarily prescribed in detail in the statute of organization. Frequently it is provided that the agenda agreed upon prior to the convocation of a general conference will not become

[17] Thus Great Britain reserved the right to introduce the subject of limitation of armament at the Second Hague Peace Conference.

definitive until adopted at the conference by a majority vote.[18]

In the case of periodic conferences in which a definite method for fixing the agenda of subsequent conferences is prescribed, the practice of making reservations that certain topics must be excluded from the discussion would seem to be out of order (except, perhaps in the case of non-member states invited to particular conferences). This would be particularly true in the case of organizations whose charters provide for the adoption of an agenda by something less than a unanimous vote of all the member states.[19]

It should be noted that the control asserted by the Council of the League over technical organizations formed under its jurisdiction applies also to the approval of provisional agenda of a proposed conference, before such agenda is transmitted to the various governments. Thus article 8 of the revised rules of the Communications and Transit Organization provides that "the agenda of every Conference shall be drawn up by the Advisory and Technical Committee and communicated to the Council of the League." A unanimous vote of the Council would be required to

[18] Communications and Transit Organization, revised rules, Article 8.

[19] For example, the Communications and Transit Organization. Under the rules for general conferences of this organization additional items may be proposed by individual member states, but these require a two-thirds majority to be included in the final agenda. See Art. 8, sec. 4, of the rules of organization. Records, 3rd Conf., IV, 43.

strike out any item of the proposed agenda, so that the control sought to be exercised by the Council is in reality very slight.

DELEGATES

Aside from matters of ceremony, the questions that arise concerning delegates relate chiefly to the extent of their competence to act. It is to be noted that delegates act in two different capacities: 1, as representatives of the political entities or other organizations that send them; and 2, as members of the conference body itself. In the former case, their capacity is determined by the terms of their appointment, and in the latter case by the rules of organization and procedure of the conference.

From the standpoint of their competence as representatives, delegates are customarily classified on the basis of whether they possess " full powers " to sign conventions or not. It has already been pointed out [20] that with the lessening in importance of the signature of conventions, this matter of " full power " has lost much of its former significance. No matter how broadly such powers may be worded, no one any longer interprets them as binding upon the ratifying branch of the delegate's government. At least in the case of conferences on non-political subjects, the requirement that all delegates should be equipped in advance with full powers seems to be merely a survival from the days when the only kind of conference

[20] See pp. 169-173.

known was the diplomatic congress. Of course, all delegates who claim to represent a political entity or organization should be equipped with evidence of their authority to do so, and this authority should be sufficiently extensive to permit them to carry out the purpose of calling the conference. But under present conditions it is not essential that such authority should include the specific power to sign conventions. In recognition of this fact, the term "full powers" is now being supplanted in some conferences by the word "credentials," which carries no implications as to the specific character of the powers granted to representatives.

In addition to regularly accredited representatives, there is the type of delegate known as an "observer." Originally an observer was a representative of a government that did not wish to take part in a particular conference but nevertheless wanted to be kept informed of the course of the proceedings. Such an observer was not a member of the conference body itself and took no official part in the discussions of the conference or in its final action. Since the war there has been developed a type of observer who actually takes part in the discussions of the conference up to the point of signing any agreement purporting to bind his government.[21] There seems to be little, if

[21] For example, the American "observer" on the Reparations Commission and on the Council of Ambassadors. This type of observer is sometimes called an "official observer," while the other type is referred to as "unofficial." Mr. Boyden was a full member of the Reparations Commission, but he represented the United States only in an "unofficial capacity."

any, difference in fact between such an observer and an official delegate who is not equipped with full powers to sign conventions, save a possible implication that the government sending such a representative gives notice that it has no present intention of participating in any collective action that may be agreed upon at the conference. It would seem that the extent to which such an observer can take part in the discussions of the conference would rest entirely within the discretion of the accredited members.

The competence of delegates to act as members of the conference body is customarily determined either in the agreement to hold a conference or in the rules of organization and procedure adopted by the conferences itself. These rules may specify the number of delegates, deputy-delegates and assistants that may represent each government, and also the capacity of these delegates to participate in the discussions, to vote, and to serve on committees and as officers of the conference. In the absence of specific provision to the contrary, each delegation has customarily only one vote regardless of its size. While the delegates, when present, are alone allowed to vote, the deputy-delegates and technical assistants are usually permitted to participate in the debates of the conference, to sit as members of committees, and to act as *rapporteurs*.

OFFICERS OF THE CONFERENCE

One of the few established customs in the procedure of conferences before the creation of the League of Nations was that the chief delegate (usually the Minister of Foreign Affairs) of the country on whose soil a conference was held was chosen to act as president of the conference.[22] When conferences were small in size and dealt only with political matters, the duties and powers of the president were not extensive, and it made little difference who was chosen. With the increase in size of conferences and their tendency to take on the character of parliamentary assemblies, the office of president has become an increasingly important and difficult position.

In the post-war conferences not held under the auspices of the League of Nations, the former practice has almost invariably been followed (as, for instance, in the appointment of Secretary of State Hughes as president of the Washington Conference on Limitation of Arms), although in some conferences where there have been several "inviting" powers, the practice has been adopted (as at the Lausanne Conference), of choosing the president in rotation among those powers.

In the conferences convened by the League of Nations and held under its auspices, the established

[22] Where the conference was not held in the territory of the state initiating the conference, this rule was not always observed. At the two Hague Conferences the first Russian delegate was chosen president rather than the Dutch Minister of Foreign Affairs.

procedure could not be followed, since the "inviting power," the Council of the League, was not itself represented by any delegate. It was felt by the Council that time would be saved and discord avoided in these conferences if someone could serve as president who was not connected with any national delegation and could give his whole time to the work of directing the conference.[23] The procedure was accordingly adopted by the Council of choosing in advance some disinterested statesman to act as president of each conference held under its auspices. Of course there was no authority for such action other than the universal practice of giving the presidency of a conference to the convening power.

In form, the Council merely nominated the president, and the conference was free to approve of the choice or to reject it and choose some one of its own members as president. But as no opposition was ever raised to the Council's choice, it gradually came to be treated more in the nature of an appointment than

[23] Thus, in his opening address, Count de Wiart, President of the Conference for the Supervision of International Trade in Arms, held at Geneva in 1925, stated as follows: "In singling me out for this great distinction, the Council of the League of Nations, following the precedent established at the Brussels Financial Conference, the Barcelona Transit Conference and several more recent international conferences held at Geneva, wished to secure the assistance of one who was quite unconnected with any national delegation, and who should be exclusively at the service of this international body—a person, moreover, who does not represent any nation or point of view, who has received instructions from no Government, and who has no other aim than to direct and assist your work and no other duty than to help you bring it to a successful conclusion as speedily as possible." (Verbatim Report of Plenary Meetings, 121.)

a nomination. Thus at the second Opium Conference of 1924, the Deputy Secretary-General of the League in his opening speech presented the Council's choice for President in the following words:

> As in the case of preceding international conferences convened under the auspices of the League of Nations, the Council was anxious to entrust the direction of your proceedings to a President whose competence and impartiality would be universally recognized. The Council's choice fell on His Excellency M. Herluf Zahle. . . . . I feel sure, therefore, that all the delegations will warmly approve the choice made by the Council of the League.
>
> I request His Excellency M. Zahle to take the Chair.
>
> (Applause.)

Professor Willoughby, in his account of the Opium Conferences,[24] considers this as an appointment rather than a nomination, and correctly questions the right of the Council to appoint the presiding officer of a conference at which states not members of the League are present. As to those states, he says that the action of the League was a denial "of any voice whatever, direct or indirect, real or constructive, in the selection of the person who was to direct the work of the body of which they were members." It is undoubtedly true that had the delegation of the United States wished to oppose the nominee of the Council, it would have been entirely within its rights in demanding that the selection be submitted to the action of the Conference. But such opposition might

[24] W. W. Willoughby, Opium as an International Problem, 233-234.

have aroused ill-feeling at the beginning of the conference, and the American delegation accordingly did no more than express its approval of the " election " of the Council's nominee.[25]

There is much to be said in favor of a system of choosing as president a person not connected with any national delegation nor acting under the instructions of any one government. He can then be selected purely on the basis of his competence as a presiding officer, and he is free to devote his whole attention to the procedure of the conference. Delay in organizing the conference is avoided, as well as the danger of internal politics. But the present system of nomination by the Council will be open to criticism until some method can be found to give voice in the selection to states that are not members of the League. It is not sufficient that the form of nomination by the Council and election by the conference be carefully observed in each instance, since in conferences convened under League auspices the great majority of states will always be League members, and the election of the Council's nominee would be a foregone conclusion. Under such circumstances it would be fruitless for a non-member state to oppose the council's candidate.

The method of choosing the president of general conferences which have permanent international organization is as a rule specified in the statute of

[25] Records of the 2nd Opium Conference (1924-1925), I (Plenary Meetings), 11.

organization. In the organizations formed under the auspices of the League of Nations, the practice has been to leave the nomination to the Council of the League, as in the case of *ad hoc* conferences. Thus Article 10 of the revised rules of the Communications and Transit Organization provides that "Unless the Council has nominated the President of the Conference, the Conference shall elect its own President." [26] That the nomination of a president by the Council is equivalent to election is apparent from the fact that the rules make no provision for the possible rejection of the nomination of the Council.

PARLIAMENTARY PROCEDURE

Nowhere is the distinction between bargaining conferences and legislative conferences more clearly marked than in the procedure followed in reaching agreement in conference. The former are, as has already been pointed out, gatherings of independent negotiators for the purpose of drawing up a bargain or contract between them. So far as the rest of the community is concerned, the transaction is in theory a private one between the parties, and they are at liberty to adopt any mode of procedure that may seem suitable to the occasion. It has not been customary to draw up and adopt rules of procedure in such conferences, and a study of the records of these conferences does not reveal that any fixed procedure has been generally followed.

[26] 3rd Conference, Records, IV, 43.

But in the case of conferences dealing with the regulation of an international activity on the basis of the whole community interested in it, the situation is quite different. Since these conferences act in reality for an association of states as a whole, they almost inevitably take on the form of a legislative assembly and adopt the practices that parliamentary bodies the world over have found to be essential in the conduct of their business.

The general outline of procedure is much the same in these legislative conferences. Almost always a draft convention has been prepared by some smaller body before the conference meets. This may or may not be submitted to the conference (acting as a committee of the whole) for the preliminary discussion of general principles. The conference is then divided up into committees for the detailed consideration of the various sections of the draft convention. These committees usually follow, where applicable, the rules of procedure adopted for the plenary meetings of the conference, except that their meetings are customarily secret, and they vote by majority rule. When they have come to an agreement, one of their number, who has been chosen as *rapporteur,* is entrusted with the duty of presenting the results of their discussions to the conference in plenary session. When the committees have completed their work the conference in full session takes up the amended draft, article by article, and votes upon each one separately. All proposals in plenary session are made in the customary

forms of motions and amendments, and it is usually required that they be presented in writing.

Frequently it is necessary to submit the amended draft to a " drafting committee " to find appropriate formulæ to express the views of the conference as disclosed by the debates, and to coordinate the various amended articles with each other. The results of the labors of the drafting committee are submitted to the full conference for approval. Thereafter the whole draft is submitted to the conference and voted on as a single document.

The president is, as a rule, given the power to announce the opening, suspension and adjournment of the meetings of the conference, direct its work, interpret the rules of procedure and insure their observation, accord the right to delegates to address the conference, declare the debates closed, put questions to the vote, and announce the result of the voting. Frequently he is assisted by a " bureau " or steering committee made up of the vice-presidents of the conference and chairman of the committees. This committee usually determines the general direction of the work of the conference, frames the agenda for each plenary meeting, and decides the order of priority of its various items.

Representation on committees sometimes presents difficult problems. On the one hand, to permit all states to be represented on all committees equally would usually mean that the committees would be entirely too large to function efficiently. On the other

hand, to exclude from membership on a committee a government that claimed a special interest in the subject-matter of the discussion would be very apt to result in a refusal by that government to accept the final results of the committee's work. At the second Opium Conference the expedient was tried of establishing two general committees on which each delegation was entitled to be represented, and having these committees appoint smaller sub-committees, which should report to them and not directly to the Conference.[27] But this procedure was found in practice to be unnecessarily cumbersome, and eventually the two general committees were abolished. While it is necessary for efficient operation to keep the membership of committees to small numbers, it is nevertheless advisable to assure representation thereon to the various divergent viewpoints that may be known to exist among the delegations of the conference on the subject scheduled for discussion.

RECORDS

Before the days of modern stenography and rapid printing presses, it was the practice to draw up at the conclusion of each session of a conference a written summary of the proceedings. This was called a "protocol." It set forth the names of those present, a short statement of the discussions, and the texts of any proposals adopted. It was customarily read and adopted at the following meeting and signed by all the delegates.

[27] See Willoughby, op. cit., 239.

Where the protocol contained the text of an agreement reached during the negotiations that was not of sufficient importance to be set forth in a treaty or convention, the protocol itself became a binding international agreement upon signature by the plenipotentiaries. As a result of this practice, the word "protocol" came to be used generally to describe international agreements that were not put in the form of treaties, conventions or declarations. Thereafter, in order to avoid confusion, the term "*procès verbal*" was introduced to describe the record or minutes of a conference session, but it has not been uniformly adopted.

When the size of conferences increased in the latter part of the nineteenth century, the signature of these protocols by each plenipotentiary had to be omitted, and authentication by the president and secretaries was substituted. Eventually even the reading and adoption of the protocols was supplanted by the distribution of printed or mimeographed copies. If no delegate took exception to these drafts they were considered as adopted.

Since the war the practice has been generally followed of taking verbatim records (*comptes rendus*) of everything said at each session. These also contain the texts of all proposals adopted, and may eventually supercede the protocol or minutes altogether. They are distributed in provisional form as soon as possible after the close of each session, and the delegates make such corrections in them as they desire. Thereafter a final printed form is distributed.

Some difficulty has arisen out of the fact that occasionally a delegate will not only correct errors of form or transcription in the provisional record of his remarks, but will also alter the substance of those remarks.[28] This presents a very delicate question, and no method has yet been found to solve it. Since these records purport to be a verbatim account of what actually took place, there is really no justification for their alteration by individual delegates at a later date (at least without the consent of the other delegates). Yet under the very best of conditions, a stenographic report of a debate is subject to a certain degree of error, and it is only fair that a speaker should be permitted to correct these errors before his remarks are finally published. But often a speaker's recollection of what he said is not reliable. It is probable that an absolutely accurate record of oral proceedings will not be achieved until some purely mechanical means of reproduction has been discovered.

RESULTS

The results of the deliberations may be embodied in many different forms, depending on the circumstances in each case.

Treaties and Conventions

The most common one is, of course, the treaty or convention. There is no difference between these two

[28] See Willoughby, op. cit., 472-473.

terms in legal effect or in form, but in modern practice the former is usually applied to political agreements and the latter to non-political agreements. Both must be signed and ratified, unless otherwise provided. Customarily a fixed period is allowed after the conclusion of a treaty for signature by states whose representatives were not equipped with authority to sign at the conference. A further period is fixed for the deposit of ratifications and for accessions and adhesions by other powers that were not represented at the conference.[29] This is accomplished by a protocol, signed by plenipotentiaries in the same manner as the original agreement.[30]

Customarily there is one treaty between all the parties, but there have been instances in the past in which each contracting party signed a separate treaty with each of the other contracting parties (for example, the Treaty of Paris of May 30, 1814).

The order of signature followed is now universally the French alphabetical order. Where an original copy of the treaty is made for each state, the plenipotentiaries sign their own copy first and the others sign in the French alphabetical order. This is known as the *alternat*.[31] Where there is only one original,

[29] There is no difference in effect between an accession and an adhesion. See Sir Ernest Satow, International Congresses, 118; Report of the Committee of Experts for the Progressive Codification of International Law on the Admissibility of Reservations to General Conventions, League of Nations Official Journal, 8th Year, no. 7, page 881.

[30] The general subject of the signature and ratification of treaties and conventions has been previously discussed; See 169-180.

[31] Satow, op. cit., 22-23.

each state receives an authenticated copy in which its name appears first, although the alphabetical order is observed in the original.

The practice has become widespread of signing and even acceding to conventions with reservations. This of course weakens the force of the original agreement, but the practice has not been discouraged because it is very often better to have a state become a party with reservations than not become a party at all. Where a reservation goes to the substance of an agreement, it is now generally agreed that before becoming binding on the other contracting parties it must be accepted by them. Yet after the conference has disbanded it is very difficult to determine whether a particular reservation goes to the substance of the agreement or not. This question has arisen several times in connection with conventions drafted under the auspices of the League of Nations, and in 1926 the Council of the League requested the Committee of Experts for the Progressive Codification of International Law to make a study of the subject. This Committee concluded that where the signature of a convention took place after the close of a conference, it really constituted nothing more than an accession, and could not operate to modify or add anything to the convention. Hence a signature made with reservations that had not been accepted by the other contracting parties was void. The Council accepted the report of the Committee "as containing a statement by highly qualified ex-

perts of the principles which ought to govern this matter, and as of great practical utility in the settlement of any difficulties which may arise in the future."[32] It was observed, however, that often states might desire to sign conventions under reservations which, if they had been brought forth during the negotiations, would have been readily accepted by the other parties to the convention. The Council felt that in such a situation a state ought not to be barred from signing the convention altogether. As a means of determining what reservations might be acceptable to the signatory parties after a conference had closed, the Council referred to the procedure adopted in connection with the Convention on Customs Formalities of 1923. At the end of that conference, all the reservations which the conference members were prepared to allow were embodied in a separate protocol, and it was provided that additional reservations (within certain limits) might be accepted if the Council of the League so decided after consulting the Economic Committee. The Council suggested that the attention of future conferences held under League auspices should be called to the desirability of adopting a similar procedure.

In this connection, an interesting procedure was adopted at the Conference for the Abolition of Import and Export Prohibitions and Restrictions held at Geneva in 1927. Article 17 of the convention concluded at this conference provided that approxi-

[32] League of Nations Official Journal, 8th Year, no. 7, p. 771.

mately six months after the close of the conference the signatory parties should send representatives to a meeting at which they should determine:

(a) The reservations which, having been communicated to the High Contracting Parties in accordance with Article 6, paragraph 4, may, with their consent, be made at the time of ratification;

(b) The conditions required for the coming into force of the Convention and, in particular, the number and, if necessary, the names of the Members of the League and of non-Member States, whether they are signatories or not, whose ratification or accession must first be secured;

(c) The last date on which the ratifications may be deposited and the date on which the Convention shall come into force if the conditions required under the preceding paragraph are fulfilled.

There is much to be said in favor of the above procedure, and if it works satisfactorily in operation it will go far toward removing the chief disadvantages of the present practice of reservations.

Declaration

In addition to treaties and conventions there is also the "Declaration," which is sometimes used to set forth a joint statement of principles of law or policy which the parties intend to observe. It is similar to a treaty in form and effect, and is customarily subject to ratification.

General Act

Where a number of different agreements are drawn up at a conference, they are sometimes incorporated

into one "General Act," which takes the form of a treaty and is signed and ratified in the usual manner. This saves the necessity of signing and ratifying all the separate documents or agreements. Thus the General Act of the Berlin Congress of 1884-85 embraced five different documents, but only the General Act was signed and ratified. The same procedure was followed at the Algeciras Conference of 1906.

Final Act

At the Hague Conferences a new procedure was adopted. Here the so-called "Final Act" was not itself a treaty and was not subject to ratification, but was in the nature of a final *proces verbal.* It contained a summary history of the conference and set forth a list of the various conventions and declarations that had been concluded. It also set forth the text of various statements, recommendations, and *voeux* that had been adopted by the conference but were not included in any of the documents to be ratified. It was primarily an act of the conference as such, rather than of the separate states represented in the conference, and its signature in no way involved the responsibility of the states in regard to the various conventions and declarations it set forth. These were signed and ratified separately. The Final Act was in fact a report by the Conference to the various governments of the work it had done.

This Final Act is a useful instrument and has now come into general favor. It is used to set forth under-

standings of the parties as to the interpretation of provisions in the convention or other agreement. It is likewise a convenient place for the expression of views and hopes which the various governments may entertain in common but are not prepared to put into the form of a definitive treaty.[33]

[33] It is of interest to note that in the case of the Conference for the Abolition of Import and Export Restrictions, the United States authorized its representative to sign the convention but not the Final Act, since the latter contained certain statements which might be taken as a reflection upon its tariff policy.

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